SIMPLIFICATION

OF

HIS MAJESTY'S AND HON'BLE E. I. COMPANY'S

Mutiny Acts & Articles of War,

PROPOSED

MILITARY POLICE

AND

LEGISLATIVE ENACTMENTS

FOR COURTS OF

Enquiry, Enquest & Ct. of Requests,

TO RENDER CRYING DOWN CREDIT—A BAR TO THE COGNIZANCE OF SOLDIER'S DEBTS.

PRECEDENTS

CONFIRMED BY AUTHORITY,

The Curtailment and Simplification of Trials by Courts-Martial.

DEDICATED, BY PERMISSION, TO

HIS EXCELLENCY GENERAL THE HON'BLE

SIR HENRY FANE, G.C.B., &c.

Commander in Chief in India,

BY

CAPTAIN W. HOUGH, 48*th Regiment Bengal N.I.*,

AND

Depy. Judge Advte. Genl. Dinapoor and Benares Divisions;

AUTHOR OF

The Case Book (1821)—The Practice of Cts.-Ml. (1825)—and the Practice of Cts.-Ml. and other Mily. Cts. (1834.)

"*Simplification is the leading object of all recent Classifications of the Phenomena of Mind.*" —(Edinb Rev. No. 123, April 1835, p. 52)

"*In the interpretation of Laws there is no end; comments beget comments, and explications make new matter for explications*"—(Locke's Human Understdg. vol 2, p. 11.)

The Law should be written in so plain a Language—"*that he may run that readeth it.*"—(Habak. chap. ii. v. 2.)

CALCUTTA:

G. H. HUTTMANN, BENGAL MILITARY ORPHAN PRESS.

1836.

[Mr. Huttmann has taken great trouble during the progress of the Work through the "Bengal Military Orphan Press"—The "*Errata*" after p. 291, are not great—and are chiefly owing to the oversight of the Author.]

To His Excellency General

The Hon. Sir HENRY FANE, G.C.B.,

&c. &c. &c.

Commander in Chief in India.

Hon'ble Sir,

I have at length the satisfaction of presenting the little Work which your kind condescension has permitted me to dedicate to your Excellency; and I shall derive a high gratification if my humble labors shall meet with the approbation of the Commander in Chief in India.

2. I should feel it incumbent on me to offer many apologies for the delay in its publication, were I not confident that your Excellency will receive my assurance, that I have been anxiously desirous of giving to the undertaking the most mature consideration, and in endeavouring to render the Work, in some degree, deserving of the approval of so high a Military Authority. From a knowledge of the great interest which your Excellency takes in every thing relating to the Army, and from the importance of the subject, I have spared no pains in my research, and have devoted my undivided attention, to collect materials to illustrate the positions I

have assumed, as confirmatory of the propriety of a Revision of the Mutiny Acts and Articles of War, both as regards His Majesty's and the Honorable Company's Armies. Circumstances have arisen to induce me to extend the plan beyond the limits I had originally assigned for the Work.

3. I had, sometime before my arrival in Calcutta, prepared a Code of Articles of War for the Native Army, and had proposed to apply it to the Armies of the three Presidencies. (1) This Code your Excellency kindly permitted me to present in manuscript. It had been framed without any knowledge that a similar production had been before your Excellency. I was gratified to find that I had adopted nearly the same plan as was pursued in drawing up the other Code.

4. I had for many years been convinced of the imperfections and omissions in the Native Code, which required many of the improvements introduced into the Articles of War framed under the 4 Geo. 4, c. 81, and more recently into the King's Annual Articles

(1) Agreeably to the provisions of the New Charter (3 & 4 *Wm. IV. cap.* 85, *Sec.* 73.) A Code had been prepared by the late J. A. G. (Sir J. Bryant) in 1825, but was not adopted. The Madras and Bombay Armies subsequently obtained New Codes, while that for the Bengal Army framed by Selections (in 1793) from the old Act and Articles of 1754, remained unaltered.

of War. A lapse of eighty-two years could not fail to leave many defects apparent to every Military Man. The renewal of the Charter seems to have been fixed on as the Era for improvements in Military Rules and Articles of War—and undoubtedly, the existence of separate Codes for each Army presented an anomaly inconsistent with uniformity of action; while one Code applicable to the whole Military body, must produce a regularity beneficial to general discipline. I was induced in 1834, from particular circumstances, to give great attention to the Provisions of the Articles of War for the Native Troops. (2)

(2) Capt. Wade, Political Agent at Loodianah, informed me that His Highness Maharajah Runjeet Singh, the head of the Seikhs, was desirous of procuring a Code of Articles of War for his Army similar to that which prevailed in the Company's Army; and I was requested to undertake the Work. The Company's Code I could not recommend for adoption, and I therefore, framed a Code partly from H. M.'s and partly from the Company's Articles of War—taking the plan and principles of the former chiefly, as my guide; and also introducing some rules applicable to the interior economy of the Army for which it was intended. As the Seikh Soldiers are formed into Messes, they differ from the Company's Native Soldiers in their mode of living.

I likewise framed, at the request of Captain Wade, an Abstract of the Company's Criminal and Penal Regulations for the trial and punishment of the Crimes of Murder, Robbery, Theft, &c. as the Maharajah was desirous of introducing into his Country, Laws more conformable to the principles of general justice than those then in force.

5. As far back as the year 1815, I was induced to apply my attention to the study of Military Law, the necessity for which was forcibly impressed on my mind, in consequence of the valuable Remarks published to the Army by the late Marquis of Hastings, when Commander in Chief in India. I found that Courts-Martial were constantly committing errors. The perusal of the Works of Military Law Writers did not satisfy my mind—as they merely state the practice in a general way—and cite Precedents often without reference to

The Regulation of the Bengal Government under date 7th Oct. 1833, abolished the use of Corporal punishment, as a Sentence, in the Company's Criminal Court, and substituted, in lieu thereof, additional imprisonment.

The Regulation contains a Clause expressive of the hope entertained by Government, that the benevolent intention of the British Government would be duly appreciated, and that the humane example afforded, would be adopted by the neighbouring Native Independent States; and lead to a departure from the inhuman punishments of mutilation, fiery ordeals, &c.

The above two Works were translated by Lieutenant Ellis, 23rd N. I., and I believe gave satisfaction. They were arranged lexicographically, and with Indexes.

Captain Wade, in a letter dated 27th September, 1834, to W. H. Macnaghten, Esq. Officiating Chief Secretary to the Supreme Government, regarding the presentation and reception of the above Works, stated—" I have been enabled to " gratify His Highness; an opportunity has been given of " extending a knowledge of our Code to the Punjab. The " Maharajah frequently refers to it as a Guide; and it is likely " to correct the indiscriminate mode of punishment which " prevails in his and other Native Governments."

Cases confirmed by authority (3); those Works (except that of Capt. Simmons,) do not usually give information to be relied on. Whatever may be the talent of the writer, speculative opinions can never be satisfactorily used as guides—as in Courts of Law, so Military Men in their Courts require authorities. (4)

6. In 1818 (5) occurred the first approximation towards a system of general improvement, by directing the Proceedings of all Courts-Martial, inferior to general ones, to be inspected by General, &c. Officers Commanding Divisions, &c., of pointing out Errors, and of Registry by the *Judge Advocate* of the Division. This plan at once brought, monthly, to the notice of General Officers and of the Judge Advocate General and the Adjutant General, the extent and nature and degree of Crime existing in each Regiment under their

(3) See *Precedents, p.* 217 to 273. The Precedents cited will often not be found in the General Orders quoted, but a reference to the trials themselves contained in four out of seven Offices of Deputy Judge Advocates General, has enabled me to collect many valuable Precedents which have received the sanction of, or been disapproved of, by the Commanders in Chief, during the last 30 years.

(4) No Judge will receive a Precedent unless published in some Book of Reports. If each Member were to act on his own imperfect recollection of distant Cases, error would succeed error.

(5) G. O. C. C. 6th Nov. 1818, at the recommendation of the J. A. G. (Sir J. Bryant.)

Command. Finding that much interest was taken by the Marquis on the subject of Military Law Proceedings, I obtained permission to publish, and dedicate my Case Book to his Lordship. ([6])

7. I returned to England in 1822, and finding that a new Mutiny Act and Articles of War for the Company's (European) Army was to be prepared, and that Section II. of 4 Geo. 4, c. 81, would extend to General Courts-Martial, the trial of Officers and Soldiers for Murder and other Capital, &c. Crimes, committed at places situate above 120 miles from the Cities of Calcutta, Madras and Bombay, comprehending the trial of 4-5ths of the European Troops—I solicited the sanction of the Honorable Court of Directors to be permitted to dedicate to them a Work, embracing not only the construction of the Mutiny Act and Articles of War, but detailing the Laws, Evidence, and mode of procedure in the Cases of Murder, &c.

8. Deeply impressed with the importance of my new subject—conscious that the production of no Military Man could be received with confidence by his Brother Officers, unless

([6]) Lr. Adjt. Genl. No. 183, 25th January, 1819, which stated that—"their collection in one or more Volumes would be obviously of public utility." It was published in 1821, and approved of by his Lordship.

it should be subjected to legal revision and correction—and feeling it due to my own character and to the interests of the Service, that a defective Work should not be published, I solicited the Court to have the Work revised by a Barrister of Judgment and Talent—to which the Court acceded and defrayed the expense—I was enabled, fortunately, to obtain the approbation of the Honorable Court; (7) and by hard study and research, which affected my health, I was gratified by the approval of my labors by the professional gentleman, who had been selected for the task of its revision. (8)

(7) "I have the Commands of the Court of Directors to state to you that they consider the publication to be of a very useful description; and to be creditable to your talents and industry." *Lr. Mr. Secy. Dart, E. I. House, 26th May*, 1825. The Court subscribed for 300 copies, and a copy was sent to each Regiment in their Service in India. I derived no profit; the work was published by the Company's Booksellers.

(8) Geo. Long, Esq. of Gray's Inn, Barrister at Law (a Commissioner under the Corporation Act) selected by Serjt. Spankie, formerly Advocate General of Bengal. I received on various occasions very complimentary Notices from Mr. Long, among which occur the following expressions—"I have gone "through your Manuscript and can very sincerely congratu-"late you on the perspicuity and ability with which it is "written"—and "I feel no difficulty in stating that, to the "best of my judgment, your statements as to the Common and "Statute Law are correct"—also—"I have to request your "acceptance of my best thanks, &c. for the handsome manner "in which you have mentioned in the Address and Introduc-"tion the little assistance which I was enabled to render you,

9. In my third Work, published in 1834, (9) I endeavoured to give some useful matter as to Military Police—Courts of Inquiry—Courts of Inquests, (10) and Courts of Requests. (11) On the above subjects there are no Works generally accessible to Officers; so that unless some individual undertakes the task, there must be a want of information on those subjects.

10. Though many Officers have complained of the difficulty of clearly understanding many parts of the Mutiny Act and Articles of War, and have remarked on the want of provisions to define the meaning of many of the Legislative Enactments, as well as the relative duties of Officers in the Administration of Justice; and though Articles of War were framed before 1689, still the improvements have not kept pace with the demand for information! No

" in the progress of the laborious task which you have so ably " and successfully executed."

The whole was written by myself and corrected, but the corrections were not numerous. As to *Military* Law, I took the whole responsibility on myself, i. e. where no legal construction was involved.

(9) For which I have received the thanks of the Hon'ble Court of Directors.

(10) There were no Inquests held in Military Cantonments till 1829—on the coming out of the Act 9 Geo. 4, c. 74.

(11) Were first introduced regularly, under 4 Geo. 4, c. 81. Sect. 57. Also 3 Trials with full Evidence by General Courts Martial for Arson, Larceny, and Murder.

individual seems to have done more than condemn in general terms, without recommending any substantive and technical improvements in a tangible form. ([12])

11. I should have to accuse myself of great presumption in proposing technical Amendments, were it not that I humbly conceive, that the Military law language used by me, is sufficiently comprehensive to clearly point out defects in such a manner as may enable others to frame the proposed provisions in more legal language, *if required*—but I have, purposely, employed the simplest phraseology, as best adapted for the use of the great majority of those for whose guidance the Articles of War are intended—thinking that unless they are understood by even the Private Soldier, they must be defective. ([13])

([12]) Mr. Samuel in 1816 wrote on the Mutiny Act and Articles of War, as to the imperfections of the old Code, *seriatim*; and to a considerable extent.

([13]) 9-10ths of the Army are Non-Commissioned Officers and Soldiers, and it must be clear that young Officers must often be puzzled to comprehend the Articles of War; and even many old Officers entertain different opinions—being guided by the exposition of different Military Writers—Officers are ordered to "look only to the Mutiny Act and Articles of War, for the guidance of their conduct, in carrying into effect the Regulations of the Service." (*G. O. No.* 442, *H. G.* 27*th Dec.* 1826)—hence should the Mutiny Act and Articles of War be really sufficient guides in all Cases, and leave nothing in doubt or to require explanation.

12. That the Mutiny Act and Articles of War are not well understood, must be well known to every Judge Advocate of experience, from the correspondence which he has with Commanding Officers. &c. But even *Judge Advocates* themselves differ as to the interpretation of particular Articles of War. ([14]) It

([14]) A Case was mentioned to me regarding the construction of the 17th Annual Article of War, "*who shall be found sleeping on his Post;—or shall leave it before regularly relieved;*"—the punishment being *Death*, *Transportation*, or such other punishment. A *Judge Advocate* once construed the words "*in foreign parts*" in the preceding Article 13, as applying to the 17th *Art.* and as barring a Sentence of *Transportation*—in the Case of a Soldier sleeping, &c. on his Post, his Regiment being in a Military Barrack in India. I was asked my opinion, and stated, that the conjunction "*or*" after Article 13 did not legally, or grammatically, render the words "*foreign parts*" applicable to Articles 14, 15, 16, and 17 (the latter, the one in question) I likewise observed that reference must be had to Clause 1 of the Mutiny Act—that Articles 14, 15, and 16 were not included in Clause 1st of the Mutiny Act—but that Article 17 (the one in question) was included in Clause 1st, Mutiny Act, among other Crimes, and that as the Sentences declared in Clause 1, were *Death* or such other punishment "*whether such offence should be committed within this Realm* (England, &c.) *or in any other of His Majesty's Dominions, or in Foreign Parts*, upon Land or upon the Sea, shall suffer DEATH, or such other Punishment as by a General Court Martial shall be awarded"—it was clear to me that *Death* or *Transportation might* be awarded, though the Crime was not committed in "*foreign parts.*"

It is true *Article* 29, punishes leaving a Post, *not* with Death or Transportation, and is the same as Article V. of Section XIV. Articles of War 1822, but it is distinct from Article XVII. which corresponds with Article X. Section XIV. of 1822, which

is, still, natural to expect that Military Judge Advocates should be able to point out the defects in a Code which is composed of both Judicial and Military materials, but

declares that whatever "*Centinel* shall be found sleeping on his Post, &c. shall suffer Death or such other punishment." *This* leaving the Post, is not that of a Centinel.

All the Provisions as to *Foreign parts* in the Articles of War for 1822, are Section XIV. Articles XI. XII. (now Articles 13 and 14) Article XIII. (now Article 14) Article XIV. (now the 15th and 63rd if in the United Kingdom) Article XIX. (now Article 16,) so that *Sleeping* on a Post (*Article* 17) has always been excluded from Crimes applying to foreign parts, and Articles XI. XII. XIII. and XIV. are the only Articles so named; they were excluded from Section 1st of the Mutiny Act of 1822, they *follow* Article X. (Art. 17) and therefore cannot be construed to apply to Article X. (Art. 17) which is placed *before* them, and though Articles 13, 14, 15 and 16 *precede* Article 17 in the Articles of War for 1836, still Articles 13, 14, 15 and 16 not being in Clause 1 of the Mutiny Act for 1836, they cannot be construed in conjunction with Articles 17.

Mr. Samuel, (1816) p. 556, states "the Article is framed on the *express* authority of the Mutiny Act to *which* we must look, if there be need of any exposition, for its *true meaning and intent*."

Captain Simmons, (1835) p. 286, states "It has been imagined that, under such circumstances only, (*in foreign parts*) could it be visited by *capital* punishment." "This distinction has never been recognized by Military Men" "an *express* declaration of the *legislature* in the Mutiny Act can scarcely be supplanted by a conjectural or imputed meaning, or be taken in a sense differing from its letter."

It it obvious too that the Crimes denounced in Articles 13, 14, 15 and 16 relate to *foreign parts*; but a *Centinel* sleeping on his Post, while placed over Prisoners, Treasure, &c. may commit a Crime as dangerous to discipline, *out* of, as *in*, foreign parts.

chiefly of the latter. ([15]) A defective Code must occasion misapprehension, reference, and delay in many Cases—the Revision of Proceedings of Courts-Martial—and prove detrimental to the interests of the Army, particularly on Service. The Newspapers in India have been the channel of much controversy on Military law points — and some Officers of talent have taken opposite views—if such men find difficulties, how much more must Officers, generally, hold doubtful opinions! ([16])

13. As I have been 11 years in the Judge Advocate General's Department, and have devoted many more years in collecting information, I have been induced to publish the present Work, in the hope that I may, in some degree, be the humble means of improving, at all events, the Mutiny Act and Articles of War of the Company's Code, particularly such parts as contain local provisions not

([15]) All Commercial Articles are first draughted by Commercial Men, and all Military Legal Enactments, should be first prepared by Military Men. All know the meaning of *Judge*-Law—that the Judges construed the *laws*, when they were not *self-interpreters!*

([16]) The majority of persons (9-10ths) for whom they are intended are Non-Commissioned Officers and Soldiers, they should be able "to run and read." The Mutiny Act and Articles of War for the Company's Army (1823) were copied *verbatim* from the King's Code (except Sections II. and LVII. of 4 Geo. 4, c. 81) on purpose to prevent delay in passing the Act, &c.

introduced into the King's Mutiny Act, &c. [17] for I may be supposed to have some knowledge as to what is necessary for my own Service.

14. I have given a large collection of Precedents which are the result of a research in the Proceedings of General Courts-Martial, held within three out of four principal Divisions of the Army, [18] during the last 20 or 30 years, which I made with great care. These Precedents can only be generally known to the Deputy Judge Advocates General of the Department, even, through the medium of such a publication, or by means of some official document; to the Officers of the Army they must be, otherwise, quite unknown.

[17] Regarding Courts of Requests, &c.

[18] I was Deputy Judge Advocate General of the Cawnpore Division from 1826 to 1829, of the Sirhind Division from 1829 to 1836, and am now attached to the Dinapore and Benares Divisions. I was sent on duty to Meerut in 1834—I was allowed to examine all the Records of that Office—I was permitted by the late Judge Advocate General (Sir J. Bryant) to have the use (in 1832) of a large Collection of MS. Notes belonging to the Judge Advocate General's Office, besides which I have collected many Volumes of Notes of value—and I am anxious to extend my research.

I humbly conceive that each Deputy Judge Advocate General should have such Penal Regulations of Government as apply to the Crimes (Murder, &c.) liable to be tried by General Courts-Martial. Also, Copies of all Circulars for King's and Company's Troops regarding Courts-Martial, &c. and the Crimes, Sentences, and Remarks on General Courts-Martial held in England, Madras and Bombay, i. e. selected Cases.

15. It has been remarked by a Military Law Writer ([19]) that "A Science without professors must inevitably fall into disrepute." The Courts of Law are indebted to the collection of Cases by Reporters, who are Lawyers, and are constantly employed in publishing the decisions of the Judges, and opinions as to the construction of the Laws. It seems desirable that some Military man should, from time to time, publish the information which may be obtained from the remarks made by Commanders-in-Chief, as well as from a research in the Proceedings of General Courts-Martial for Precedents. ([20]) It is most clear that if any useful Precedents are unknown to the Deputy Judge Advocates General, they must, let them be ever so talented, labor under great disadvantages, and may commit errors which it is possible to avoid.([21])

([19]) Sullivan, (1784) p. 1.

([20]) Major General Sir John Macdonald, Adjutant General His Majesty's Forces, kindly, in 1824, gave me every assistance I could wish, (and at the desire of His late Royal Highness the Duke of York) and strongly urged me to continue my labors. My means of obtaining information has been often casual, but I have never failed to avail myself of every opportunity of doing so.

([21]) The Judge Advocate General of the Bengal Army has had so much to do of late years, that any but the current duties of his Office were out of the question. It is so in *India* as in *England*, that the Heads of Departments have not time

16. The Marquis of Hastings introduced the practice of publishing the Crimes, Sentences of, and Remarks on, General Courts-Martial held at the Presidencies of Madras and Bombay, which has since been discontinued. I regret the cause assigned, was the expense! It is desirable that trials of interest should be published to the Army of each Presidency—then the expense could not be great. (22)

17. The Old Writers on Military Law are either dead, or have ceased to write (23)—their works are inapplicable to the improved state of

to devote to works of improvement, to any extent; it is well known that many works are got up by inferior officials at Home, and that Ministers of State, even, must derive much assistance from others—the Calculations of Mr. Pitt's Budget were never made by himself.

(22) The publication of the whole would be useless—I had access to them all in 1820 and 1821—and there were then about 250 persons tried at the three Presidencies annually! The *General Regimental Courts-Martial* were not then used so frequently as the present *District* or Garrison Courts-Martial, so that the *General* Court-Martial was more frequently used.

Last Work.

(23) *Old.*
1. Major Adye, before 1784, 8th Edn. 1810.
2. Mr. Sullivan, Ditto,......2nd ditto, 1784.
3. ,, McArthur, 1792.....4th ditto, 1813.
4. ,, Tytler, 1800 ......3rd ditto, 1814, (*by James.*)
5. ,, Delafons, 1805.
6. Military Law of England, (Scott) 1810.
7. Mr. Samuel, 1816.
8. Major James, 1820...........Crimes and Sentences.

the Laws, particularly as regards India ([24]) since the extension of the Jurisdiction of General Courts-Martial; for as was observed by the late Commander-in-Chief in India, the duties of Judge Advocates are more important now, than they formerly were. ([25]) Works published in England on Military Law do not embrace all the subjects required for the use of General Courts-Martial in India, ([26]) and conse-

New.
9. Captain Hough, ...1821—1825—1834—1836—(Bengal Army.)
10. Colonel Kennedy, late Judge Advocate General, Bombay Army,... 1824—1832.
11. Captain Macnaghten, Bengal Army, formerly Deputy Judge Advocate General, ... 1825—1828. Annotations.
12. Captain Simmons, Royal Artillery—1830—1835.

McArthur was much disappointed in the limited sale of his Work. I could get no Publisher in London to publish my 2d Work (1825) till the Court of Directors took 300 copies for their Armies. The 1000 copies printed were all sold nearly 5 years ago; but then the Indian Army contains 4000 Officers, and they are always liable to be employed.

([24]) Where there is an Army of 180,000 Men.

([25]) "With the recently extended jurisdiction given to our Military Courts, a knowledge of law and practice becomes every day more necessary to our embarrassed Judges, and it is not every Judge Advocate, who, like yourself, has given so much time and attention to the study of Martial Law."—His Lordship added—"your Work requires no extraneous protection. Its best patron is its own universally acknowledged utility and merit."—(*Lr. from Lord W. C. Bentinck, 3d June,* 1834, *to the Author* on the publication of his last Work.

([26]) The Judge Advocate, has to refer to the King's Mutiny Act and Articles of War—to the Company's (European and Native)—to the Act for the Administration of Criminal Justice

quently the duties of Judge Advocates in India require more study and research.

18. In the *King's* Mutiny Act and Articles of War there are defects—1st, *(for example,)* in the Case of ***Desertion*** there are Clauses 1, 11, 21, 22, 23, 24, 28, and 45 of the Mutiny Act—and Articles of War 7, 20, 38, 81, and 84, all which, as relating to the same subject, should have been consecutively arranged in the Mutiny Act and Articles of War respectively, and the Clauses from the Mutiny Act should have had reference made from them to the corresponding Articles of War. Defects in King's Mutiny Act and Articles of War.

2nd.—There are *repetitions.*

			Articles of War.
Mutiny Act Clause..	6	repeated in....	71
....	9	,,	77
....	10	,,	101
....	21	,,	84
Schedule (Oath) p...	96	,,	90

3rd.—*Articles of War.* The following Articles of War of the same import should have had references made to and from each other—Articles 14 and 24, 15 and 63, 17 and 29, &c. [27]

19. In the *Company's* Mutiny Act, Sections I. V. VI. VII. IX. X. XI. LIV. LXVII. Defects in the Company's Mutiny Act and Articles of War.

in the East Indies, and to the Penal Regulations of Government, or Acts, of the Government of India.

[27] Thus Article 14, vide Article 24,—Article 24, vide 14, &c.

and LXVIII. relate to *Desertion* and should have followed each other.

The *repetitions* are:—

				Articles of War.
M. Act	XIX.	repeated in	Sec. XIV.	Art. II.
	XXII.	,,	,,	VI.
	XXVII.	,,	,,	IV.
	XXVIII.	,,	,,	XVI.
	XXIX.	,,	XIX.	I.
	XLII.	,,	XI.	V.

General Index required.

20. There is required in His Majesty's Mutiny Act and Articles of War an Index. There is an Index to the Company's Mutiny Act (1823) but not to the *Articles of War*, the *most in use.* Besides an Index each Clause, and Section of the Mutiny Acts, should, if not consecutively printed, have references to the preceding and succeeding Clauses, &c., and the Articles of War in the same manner. The numbering the Clauses ([28]) or Sections of the Mutiny Act 1, 2, 3, &c. is a better plan than using the Roman figures I. II. III. &c. The use of Sections, and Articles under each Section, is inconvenient. His Majesty's Articles of War are numbered 1, 2, 3 to 145. The plan is that of the Code Napoleon. ([29])

([28]) *Sections* seems a more correct term—as a Clause is part of a Section.

([29]) " *Les cinq Codes.*" It may appear frivolous to allude to such *minutiæ*, but I am convinced that nothing is of more consequence than arrangement. In the Peninsular War they

In paras. 18 and 19 I have mentioned repetitions. They occupy about 12 pages. The duties of Courts-Martial laid down at pages 187 to 189, 199 to 203, vol. 1, and 401, 415, 419, 496, 579, 630 and 646 of vol. 2, occupy 10 pages, and some of vol. 3 would be well inserted at the end of the Articles of War, in the space occupied by the above repetitions; and many other useful points might be laid down by authority.

21. A Judge Advocate must also be familiar with the Orders of Government and those of the Commander-in-Chief, or have the means of referring to them. The above Orders relate to the general duties of all Officers. (30) I early gave my attention to the above subject (31) as so much depends on the

kept two Clerks at the Horse Guards for the sole purpose of indexing the names of Officers addressed, and the heads of subjects of Correspondence. The Ledger was so large as to require two men to lift it.

(30) The Bombay Government recently published the Standing Orders for the years 1832, 33, 34, and 35, for 4 Rupees a copy. There are 3 vols. of Orders published at the Horse Guards. In the Peninsular War there were 10 vols. of the Duke of Wellington's Orders, a copy of which was given to every Commanding Officer of a Regiment on his arrival to join the Army. A copy was lent me by Major General Sir John Macdonald, Adjt.-Genl., &c. an Abstract of which called "The Principles of War," was published in 1815 by Mr. Samuel.

(31) Major Henley of my Regiment, published a Work in 1812—and Captain Carroll, late of His Majesty's Service, published another in 1817. But as I found a greater simplicity in

correctly understanding the duties of all Officers. The want of a Code of Standing Orders for Regiments had long been felt; and I, about 18 years ago, made a collection. ([32])

the Rules and Regulations for His Majesty's Army, my attention was directed, about 9 years ago, to the subject. I have submitted several plans. The first led to the publication of a General Index of General Orders from 1816 to 1830, and, subsequently to the publication of the Standing Orders for several past years. My last plan proposed a *lexicographical* mode of arrangement, in 2 vols. royal 8vo., and though my offer was not accepted, Mr. Jephson of the Adjutant-General's Office, is now preparing a Code on that plan. I had proposed to execute the Work in 18 months.

Though it will be a long time before the Work can be published, owing to the Compiler's health not permitting of his devoting so much of his spare time as formerly; yet, as the Work will contain all "*Circulars, &c.*" it will be of permanent public utility, since by adopting the same plan, after the completion of the Work, in future years, the annual publication will continue its utility—and a reprint every 8 or 10 years will alone be required to preserve the system.

The arrangement by A. B. C. not only saves an Index—is of easy reference—saves many marginal notes—*but brings each subject, in a connected form, under one head.* I recommend the plan for the Rules and Orders for His Majesty's Army.

Including Carroll's Code, there are now 11,000 pages of General Orders besides "*Circulars,*" and before the Work can be completed, the matter to be abstracted from will amount to 13 or 14,000 folio printed pages. The Work will be in 2 vols. royal 8vo. 1,200 pages.

I was very anxious to have published a Work on which I had devoted much time and consideration; but a residence near the Adjt.-Genl.'s Office, &c. would have been a *sine qua non.*

([32]) Colonel Casement, the Secretary to Government Military Department, (Calcutta), had prepared a Code which I understand was a very valuable one. His having commanded a

22. It always appeared to my mind, that the Recruiting for the Army was a subject of the highest importance, not only as regards the *materiel* and its efficiency on Service, but as affects Discipline. In the year 1817 I was aware of the great Military preparations designed to crush the Pindarrees ([33])—the War, subsequently assumed a more imposing form, and the British were obliged to contend against Scindiah and Holkar, &c. It occurred to me, that the result of our Military operations would probably occasion a great increase to the Army, for the occupation of new Conquests. The result of our War with Nipal ([34]) had rendered necessary the formation of

Regiment for many years, and having been engaged in the whole of Lord Lake's Campaigns, enabled an Officer of his intelligence and talent, to frame an original Code; the result of his experience. It was given to the Adjutant-General of the Army, but was lost or mislaid.

While I was in Calcutta, publishing my first Work (1820) I was recommended in the absence of the Colonel's Code, to present to the Adjutant-General, the Collection I had made from the Standing Orders of several Regiments, together with an Index. I did so—Corps were called upon to send in their Standing Orders—and in 1828, Captain Pasmore, Assistant-Adjutant-General of the Army, published the Code now in use.

([33]) They were said to have been 40,000 in number. We had about 80,000 men in the Field, including Irregulars!

([34]) I was with the Centre Division of the Grand Army under Lord Hastings in 1817-18, and was Interpreter and Quarter Master of a Grenadier Battalion in the War with the Goorkhas in 1815.

Grenadier Battalions, which led to another measure which was unfortunate in its results.[35] I offered a Plan in May, 1817, for Recruiting Depôts formed on a regular system, being convinced, that the Invalid Establishment had been grievously burthened from want of attention to the Recruiting of the Army. [36] My Plan was, that an Officer, or Officers, should be selected to raise men for the Native Army as prevails in His Majesty's Army [37] by establishing *Depôts* at certain points—regularly organised, for the purpose of Drill as well as for all other purposes.

23. Your Excellency is aware that a Memorial for the Brevet Rank of Major for all Captains, after having served 12 years as Captain, was written by me, and transmitted by you to Government—but as the Honorable

[35] The Grenadier Companies were taken from 32 Battalions, and their places were supplied by hastily enlisted Supplementary Grenadier Companies. From the two Supplementary Grenadier Companies of my own Regiment (then 1st Battalion 24th N. I.) 60 Men were found unfit for the Service—these Men were raised by Levies in 1,000, 1,500, &c.

[36] Men were inlisted at the age of 30 and 40 years.

[37] Commanding Officers always wish to entertain their own Men, but, my opinion is, that a General System is the best.

The Depots by being in the Upper Provinces, would have afforded the means, in time of War, of supplying Corps in the Field with efficient men; while the completing those in the lower Provinces was of less consequence at the moment.

Court of Directors felt a difficulty in submitting a former application from other Officers to His Majesty's Government on the above subject, it has not been deemed expedient to transmit the present Memorial to the Honorable Court. I trust, however, that your Excellency will permit me to solicit you to recommend the adoption of the above measure, ([38]) as the grant of the Rank is attended with

([36]) Subalterns are Brevet Captans after 15 years Service, the promotion from Captain to Major is uncertain, that from Major to Lt.-Colonel is obtained in 5 or 6 years, and that from Lieutenant Colonel to Colonel of a Regiment in 9 or 10 years; while I, and many other old Captains, have been more than 30 years in the Service, and our prospects of promotion are still distant.

The Boon granted by the Hon'ble Court (G. O. G. G. of India in Council, 23d May, 1836) must be acknowledged with gratitude by every Officer—and I should hope that, if a Service of 25 years (or 28, including a Furlough) entitle an Officer to the Retiring Pension of *Major*, and of 30 years (or 33, including a Furlough) entitle an Officer to that of a *Lieutenant Colonel*, there can be no impropriety in soliciting a rank corresponding with the period of Service, after which a Pension is granted.

I have been superseded by 70 or 80 Lieutenant-Colonels and Majors in the Bengal Army alone ; and must suffer double that number of supersessions, before I can expect to be a *Regimental* Major

A great many Officers concurred in the prayer of my Memorial, (about 250.) Sir E. Barnes (when Commander-in-Chief) and Lord William Bentinck, were I know, desirous of obtaining the grant for the unfortunate Captains—and since the situation of Officers of the latter class is alone unprovided for, I respectfully solicit your Excellency to do me and the rest of the old Captains of the Army the kindness, to recommend the

no expense. I am confident that Government would have been desirous, (as on other occasions,) of recommending the favorable consideration of my prayer: and as I feel the difficulty of my position, I trust I shall not incur displeasure in any quarter.

grant, to the favorable consideration of the Home Authorities, with whom such grants usually originate—since, even in His Majesty's Army, old Officers for length of service receive grants of Lands in Australia, &c. in proportion to the number of years they have served in each rank or grade.

For the Pensions for length of service the Army are indebted to Lord William Bentinck. In July 1832, His Lordship did me the honor to ask me to prepare a plan and scale of Pensions, which, from having given the subject consideration for many years, I was enabled to effect. His Lordship wrote to me as follows: "I have not treated with indifference another endeavour of yours, in the principle of which I entirely "agree, to regulate the Retiring Pension by years of service, "and not by rank. I have had it for some time under consi-"deration, and I have taken the means of consulting the opi-"nions of the best qualified Officers upon the degree of sa-"tisfaction, that this alteration would give to the Officers in "general"—(*3rd June*, 1834.)

The amount of Pension which I proposed to, and was approved of by, His Lordship, was on a more liberal scale; the maximum was 500£ a year after 30 years actual service in India; as it was felt that there should be no inducement to any Officer, to protract his continuance in the service beyond that period; as it would generally, give the age of 50 years.

With Pensions for length of service, it would gratify such Officers if they received the rank attached to the Pension, on Retirement.

In November 1833, I submitted to Lord William Bentinck a plan for defraying the expense of increased Pensions by the sale of Cadetships; as such would be the means of relieving

24. I have been particularly anxious to endeavour to render my labors useful in suggesting improvements, and having before published three Works, I have been solicitous that any little merit which I may have obtained on those occasions, should not be forfeited by the production of a Work of a description

ing the Honorable Company from the burthen of a Pension List of (I believe) about 40,000£ a year. The Half Pay of His Majesty's Army and Navy did cost a million sterling!

Mr. Cutlar Fergusson in his speech on the East India Bill, in the House of Commons, 26th July 1833, made the following statement—"The number of Cadets appointed during the "last 21 years was 5,092; and of these he believed a very "large proportion were the Sons of meritorious Officers; 409 "were the Sons of Civil Officers; 411 the Sons of Military "Officers; 124 the Sons of Maritime Officers; 308 the Sons "of Clergymen; 1018 Orphans." (*Calcutta Courier, 16th November,* 1833.)

Recapitulation—

Cadets.	
409	Civil.
411	Military.
124	Maritime.
308	Clergymen.
1,018	Orphans.
2,270	
2,822	not stated.

5,092÷21 years=242 yearly.

My opinion was that the sale of Cadetships would even at 300£ yield 72,600£ yearly. I was informed that the *Honorable Colonel L. Stanhope* made such a proposition some years ago, which was unanimously rejected by the Court of Proprietors.

inferior to the former. I was also impressed with the propriety of presenting to your Excellency a Work, which should testify my zeal for the Service; and be, in some degree, if I may so express myself, deserving of the approbation of the Commander in Chief in

I am aware that a certain number of appointments are reserved for particular purposes, and that a *fifth* of the Cadetships are given to Orphans. I therefore, would propose that *one-fourth* should be reserved as *free-gifts*—and then the sale of three-fourths would yield 54,450£ a year—and pay for the whole increased rate of Pensions for length of service; which should be, that of Major after 25, of Lieutenant-Colonel after 30, and of Colonel after 35 years' service, *without reference to furlough. For now the sick Officer must serve 3 years longer than the Officer whose health permits of a continued residence of* 25, 30 *and* 35 *years ! ! !*

It would afford to the old Officers the opportunity of providing for their Sons—the above Table exhibits 411 for Military Officers' Sons (whether all in the *Company's* service is not stated) now 411 ÷ 21 = 19½? yearly. There are in the Bengal, 800 *married* Officers out of 1980 Military Officers—about 550 in the Madras, and about 250 in the Bombay Army—or total about 1,600 *married Officers in the Indian* Army, therefore *one Military Officer in four* obtained a Cadetship for his Son—or if 400 Officers only be supposed to have Sons of the age (16 years) required, then, one Officer obtained a Cadetship for his Son in 21 years! My opinion was, and is, that the proposition could in no way affect the patronage of any Director, since, if *A.*, *B.*, *C.* were candidates, and there were only one appointment to be sold, the patronage would be exercised in giving to A. for example, instead of to *B.* or *C.*

But I would propose the price of Commissions as in His Majesty's Service to be adopted. My proposition was not (like Colonel S.'s) to pay off the Company's debt, but to raise funds for the legitimate purpose of paying the Pensions of Officers!

India. Nor could a positive failure in the present production be regarded by me, otherwise than as injurious to my future prospects in an Army in which I have served more than 30 years. I have on all occasions spared no expense, and though my publications have never been a source of profit to me (39) still I feel that there is a duty which all Officers

The Company's debt, like the National debt, is, to a certain extent, an advantage—it provides, as *Adam Smith* observed, an income for those who cannot labor, and there are political reasons in favor of the Company's Debt to its present extent. It was prophesied that 500 *Millions* Sterling would make England a *bankrupt nation*—1000 *Millions* produced no such result—the increase of population has spread the means for the payment of the interest, over a more extended surface; and the Commercial prospects of India, must ere long, add to the Company's financial resources—and improve the circumstances of the whole Indian Community!

(39) I was obliged to obtain an extension of my furlough for 9 months, to complete the work which I dedicated to the Hon'ble Court in 1825. I lost thereby 400£ of Indian Pay and Allowances as a Captain, and lost the advantage of an earlier appointment to the Judge Advocate General's Department, which the kindness of the Commander in Chief (Sir E. Paget) had designed for me had I been in India. My exertions on that occasion involved me in debt, and was attended with injurious consequences to my health; and induced my Medical friends to recommend the abandonment of my labors—which I declined. I should hope that nine months, spent at such a sacrifice, will induce the Hon'ble Court to allow me to *reckon such time in my period of Service*—for though, according to *Adam Smith's* theory, my labors did not produce an income; I trust the Hon'ble Court will take a more liberal view of my exertions. In His Majesty's Service Officers may have several furloughs, without losing their Pay!

owe to the Service to which they belong. Nor have I ever entertained the merely cold calculating notions of the *quantum merit.* I have always been of opinion that as an Officer, a Gentleman, and as a Christian, every one should try to "labor to advantage in his calling" or profession, according to the best of his abilities—and if he acts according to the best of his ability and fails, he will retain an approving conscience, and will secure the sympathy of his fellow-men.

I have the honor to be,
Honorable Sir,
Your obliged faithful Servant,
W. HOUGH, *Captain,*
Depy. Judge Advte. Genl. Dinapoor and Benares Divisions of the Bengal Army.

CALCUTTA,
16*th December,* 1836.

TABLE No. 1.

Exhibiting the number of Persons tried in the years 1834 and 1835.

Years.	Officers.		Staff Serjts., &c.	King's.		Company's.			Natives.		Camp-followers.	Total.
	European.	Native.		Dragoons.	Infantry.	Horse Arty.	Foot Arty.	Eur. Regt. Infantry.	Cavalry.	Infantry.		
1834, ...	15	7	3	8	48	6	12	9	5	17	9	139
1835, ...	16	3	1	5	56	5	10	12	0	9	1	118
Total, ...	31	10	4	13	104	11	22	21	5	26	10	257
Years 1824 to 1833 both inclusive— 10 years preceding, ...	105	37	19	2	68	29	55	35	3	54	48	483([1])
Yearly average of 2 years 1834 and 1835, ...	15	5	2	6	52	5	11	10	2	13	5	128
Do. of 10 years 1824 to 1833—both, &c.	$10\frac{1}{2}$	$3\frac{1}{2}$	2	1	34	3	$5\frac{1}{2}$	$3\frac{1}{2}$	$\frac{1}{3}$	$5\frac{1}{2}$	5	48([1])

N. B. In the year 1828 there were 69, and in 1831 only 38 persons tried. There has been a great excess of trials in the years 1834 and 1835—particularly in 1834—50 P. C. on the average of the 10 years preceding —See Note ([1]) p. 113—should be 139, instead of 159— but 140 were tried in 1834.

([1]) The total of these Columns is 455—but there were others tried not introduced into the Columns for 1834 and 1835. In 1834 was 140—The number in 11 months of 1835—79 Trials.

Table No. 2.

Crimes for which tried in 1834 and 1835.

1834. European Soldiers.	No.
Absent without Leave,	1
Assaulting a Sentry,	1
„ indecent,	1
Burglary,	1
Desertion, (2)	6
Drunkenness,	1
False and Malicious Accusations,	2
Insubordinate Conduct,	3
Malingering,	1
Manslaughter,	1
Murder,	1
Mutinous, (3)	14
Mutiny, (3)	13
Post leaving,	2
„ sleeping on,	2
Robbery, (4)	6
Shooting at,	1
Stabbing,	1
Striking N. C. O. &c. (5)	22
„ a Soldier,	1
Theft,	4
	85

1835.	No.
Absent without Leave,	8
Appeals,	3
Arson,	1
Cheat,	1
Complaint,	1
Desertion, (2)	17
Disobedience, &c.	1
Disorderly Conduct,	2
Embezzlement,	1
Highway Robbery,	1
Insubordinate Conduct,	4
Mutinous, (3)	13
Mutiny, (3)	8
Post leaving,	2
„ sleeping on,	3
Riotous Conduct	1
Robbery, (4)	4
Stolen Property, &c.,	3
Striking N. C. O. (5)	11
Theft,	4
Wounding,	2
	91

(2) The *Desertions* among *Europeans*, 23, in years 1834 and 1835, and only 37 in 10 years preceding—*Natives* 3 in 1834 and 1835, and 16 in 10 years preceding.

(3) *Mutinous Conduct and Mutiny*—48 *Europeans* in 1834 and 1835, and only 59 in 10 years preceding—*Natives* 1—and 6 Cases in 10 years preceding.

(4) *Robbery*--10 Europeans in 1834 and 1835—and 5 only in 10 years preceding.

(5) Striking Non-Commissioned Officers in execution of duty—33 Europeans in 1834 and 1835—they were in the 10 years preceding charged as "*Mutiny*"—now, add Mutinous, Mutiny (*Note* 3) and striking, &c., and the total in 1834 and 1835 is 81, an average of 40 yearly—while 59 Mutiny in 10 years preceding, give only an average of 6—so that these Crimes have increased nearly seven-fold ! ! !

Table No. 2—(*continued.*)

1834. Native Soldiers.	No.
Appeal,	1
Burglary,	1
Desertion and Embezzlement,	1
Desertion,	1
Murder, [6]	8
Accessary,	2
Accessary after fact,	3
Slaves dealing in	1
Theft,	4
	22

1834. Camp Followers.	No.
Burglary,	3
Child Stealing,	2
Murder,	1
Stolen Goods, &c. knowing to be stolen,	2
Wounding,	1
	9

1835. Native Soldiers.	No.
Desertion,	1
Disgraceful Conduct,	2
Fraud,	1
Murder,	1
Mutinous,	1
Slave buying,	1
Theft,	2
	9

1835. Camp Followers.	No.
Murder,	1

Table No. 3.

Punishments.

Europeans.	1834.	1835.
Death,	1	0
Transportation for Life,	1	1
Commuted to ditto,	4	0
Transportation 14 years,	1	4
Ditto 7 ditto,	11	18
	17	23
Transportation,	40 [7]	

Native Soldiers.	1834.	1835.
Death,	2	1
Transportation for Life,	1	0
Imprisonment, hard labor, 7 years on Roads,	7	0
Ditto 5 years,	2	0
Imprisnt. Hard Labor,	9 [8]	
Imprisonment 3½ years,	0	1
Ditto 1 month,	0	2
Camp-follower.		
Death,	1	0

(6) Murder by Native Soldiers 11 in 1834 and 1835—and only 10 in 10 years preceding.

N. B.—The rest of the Crimes are not beyond the average of the 10 years preceding.

(7) 40 Transportations in 1834 and 1835—or 20 a year—28 in 10 preceding years—or 3 a year! increase, seven-fold!!!—See Note (6) p. 90.

(8) 9 in 1834 and 1835—and 11 in 10 years preceding, more than four-fold, increase.

TABLE No. 4.

Imprisonment of European Soldiers. (9)

Years.	No. of persons.	Months awarded.	Remitted.	Inflicted.	Average each.	Remarks.
1834	58	666	155	511	8⅘	1 to 24 months awarded.
1835	61	533	137	396	6½	2 to 24 ditto ditto. These were, with one exception, (being for *Military Crimes*)—*Solitary* Imprisonment.
Total.	119	1199	292	907	—	

TABLE No. 5.

(10) *Corporal Punishment*—(by Gl. Ct.-Ml.)

Years.	Europeans.				Natives.			
	No.	Awarded.	Remitted.	May have been inflicted.	No.	Awarded.	Remitted.	May have been inflicted.
1834	3	2600	...	2600	5	2981	1200	1781
1835	8	4980	2380	...	...	...	...	...
	11	7580	2380	2600	5	2981	1200	1781

TABLE No. 6.

	Acquitted.	Not Confirmed or Disapproved.	Total.
1834,	14	4	18
1835,	7	3	10
	21 (11)	7 (12)	28

(9) 119 Cases in 1834 and 1835—and 114 in 10 years preceding—so that in the years 1834 and 1835 they were five-fold!

(10) 11 Cases in 1834 and 1835—and 15 in the 10 years preceding; nearly four-fold in 1834 and 1835, but even 11, or 5 or 6 yearly out of 14,000 Men (see Note 1, p. 52, *Co.'s*, and 10 *King's* Regt.) are only 1 in 2400 men yearly.

(11) 21 Acquittals in 1834 and 1835—out of 257 trials, or 1 in 12. In 10 years preceding 58—out of 483 or 1 in 8 nearly.

(12) 7 not confirmed, &c. in 1834 and 1835—out of 257, or 1 in about 49. In 10 years preceding, 36 out of 483, or 1 in 13 or 14.

TABLE NO. 7. ([13])

Exhibiting the amount of force and the number of Trials by Courts-Martial in the British Army—and number of Persons on whom Corporal Punishment was inflicted.

YEAR.	Amount of Force.	Number Tried.	Average Tried. ([14])	Number Flogged.	Average Flogged.
			1 in		1 in
1825,...............	98,946	4,708	21	1,737	50
1826,...............	111,058	5,524	20	2,212	41
1827,...............	111,107	5,340	20	2,291	40
1828,...............	110,918	5,314	20	2,143	51
1829,...............	103,747	4,782	21	1,748	59
1830,...............	103,374	5,946	17	1,754	58
1831,...............	103,413	7,438	14	1,489	69
1832,...............	103,572	8,780	12	1,283	80
1833,...............	103,527	9,628	11	1,007	102 ([15])
1834,...............	103,063	10,212	10	963	107

Mr. Wakefield gives as the effect of trials in London Commitments 1829 to 1831, both inclusive, 320 Acquittals out of 979 persons, tried in *London*, or 1 in 3 acquitted.

If we take the 21 Acquittals, and add the 7 not confirmed, &c. or total 28, then they give 1 out of 9, and I may apply the same Rule to *Regimental* Courts-Martial ; a fact which proves that in *Military* trials a more minute previous inquiry takes place, than in criminal trials at Home.

([13]) Taken from the Table framed at the Horse Guards, 18th February 1836, published in the Report on Military Punishments by the Military Commission. No Return for 1832, from the 4th Regiment, for 1833, from part of 2d W. I. Regiment, nor for 1834, from 40th, 50th ; and Ceylon Regiments.

Columns 4 and 6 are my own, as columns 4 and 5 of the Report are explained by the other columns.

([14]) Leaving out Fractions.

([15]) G. O. H. G. 24th August 1833, the restriction order was then published.

Table No. 8. (16)

Exhibiting the amount of Force of the Native Armies of Bengal, Madras and Bombay—number of Men flogged—and of those discharged the Service, for the years 1829, 1830, 1831, 1832 and 1833.

Strength.		Lashes inflicted yearly.	Lashes per Regt. yearly.	Being 1 Man in	Men yearly in each Army.
Bengal,	59,264	8,062	145	1481	40
Madras,	42,111	40,285	948	209	201
Bombay,	20,576	32,753	2,614	163	163

The number of Discharges in the Native Army in 5 years—1829 to 1833, were—

		Yearly.
Bengal,	7,610	1,522
Madras,	4,905	981
Bombay,	3,043	608

(16) Lord W. C. Bentinck's Minute in Council 16th February 1835, copied from p. 69 (*Selections*) of the East Indian United Service Journal for September, 1836.

The columns in the Table quoted gives, as Heads, 1st, Numbers Sentenced—2d, Sentences Executed—3rd, Lashes awarded—4th, Lashes inflicted—5th, Discharges. I have blended the Cavalry and Infantry together, as is the Case in Table No. 7; and as the *Lashes inflicted* does not represent the number of men flogged, I must, in my estimate, suppose an average of 200 Lashes per man: the Table being for 5 years, does not show increase or decrease in any year, so I have divided by 5, the only resource left.

TABLE No. 9. ([17])

Exhibiting the number of Courts-Martial held on N. C. O. and Privates of H. M.'s Regts. on the Bengal Establishment in the years 1831, 1832, 1833 *and* 1834—(to be compared with Table No. 7.)

STRENGTH.	Genl.	Distt.	Regtl.	Total.	1 in
1831—7844	11	129	272	412	19
1832— do. ([18])....................................	13	172	338	523	15
1833— do.	14	127	275	416	17
1833— do. ([19])....................................	60	124	317	550	14

In Table No. 2, in my 3d Work (1834) I stated that the number of Native Soldiers (Bengal) *tried* by *Regimental* Courts-Martial, were, *Cavalry* 1 in 300, *Infantry* 1 in 237, in 7 years in the Sirhind Division, in 2 Cavalry, and 6 Infantry Regiments.

CORPORAL PUNISHMENT. ([20])

With regard to Corporal Punishment in the Native Army of Bengal, I have shewn in Table No. 8, that 1 man in 1481 was flogged yearly, which is about one in every Regiment, every *second* year. I therefore think the seeing *one* man flogged in 2 years, would

([17]) P. 83, East Indian United Service Journal, Sept. 1836.

([18]) Since 1829, the Regiments of Dragoons were 754 in strength, and the Infantry 792—I have assumed the full strength—of 10 Regiments (2 Dragoons and 8 Infantry, not including H. M.'s 62d Foot.)

([19]) The month of December, 1834, not included—I have assumed 550 instead of 501 as the *total*, in consequence.

([20]) See p. 67 to 81, East Indian United Service Journal for Sept. 1836.

not be likely to deter men of good character from entering the Army.

1st. The opinions as to the propriety of the *total* abolition of Corporal Punishment have been various—

	Pro.	*Con.*	
Council of India,......	3	1	(*a*) Unless by
Bengal Committee, (*a*) .	1	5	*General* Court
Madras ditto, ...		5	Martial.
Bombay ditto,........		5	
	4	16	

2nd. That it should be restricted to *General* Courts Martial—

Bengal Committee,	4	out of	6
Madras ditto,	5	,,	5
Bombay ditto,(*b*)	0	,,	5
	9		16

(*b*) The Bombay Committee allowed it for the Crimes of Desertion, Mutiny, Insubordination attended with Violence to Non-Commissioned Officers, Marauding, &c. to *Detachment* Cts.-Ml. in the Field.

That its restriction to a *General* Court-Martial is inapplicable is obvious, since, if the approving authority be not on the spot, delay ensues and the object of example is lost; and there may be cases, even in a cantonment, which may, though rarely, require its infliction.

Its infliction was greater at Madras and Bombay (*See Table No.* 8,) but that was no reason for its abolition in the Bengal Army.

After the able and conclusive opinions given by the Duke of Wellington, the Commander-in-Chief (Sir Henry Fane), and by many other eminent Officers, it would be presumptuous to say much on the subject, as a general question.—See pages 65, 67, 70, 80, 86.

As a question regarding the *Native Army*, I am sorry to differ in opinion from some of those whose opinions are entitled to respect. I must say that the reason why Native Officers and Natives of rank, do not like their sons and relations to enter the Army, arises chiefly, from the circumstance of the slowness of promotion. A Native Officer told me he had served 40 odd years before he was made a Subadar, and said " I have risen to this rank when too old to be of much use, why should I subject my son to the same misfortune. (21)

(21) I cannot say what would be the sum of opinions if those of the most experienced Officers were collected—but, I must say that *all* with whom I have conversed on the subject (with *very, very, few* exceptions) are against its *total abolition !*

I cannot but be of opinion that it is the *Crime* and not of the *punishment*, which must be looked upon as a disgrace.

The giving Evidence against a *Brahmin* so as to affect his life was once considered a Crime in any Hindu—and it is well known that *Brahmins* who committed *Murder*, were not made amenable to a Sentence of *Death*, till the Regulation of 1793, of the Bengal Government. Such prejudices have subsided. The discharge of a Soldier if flogged for a disgraceful Crime,

In the *British* Army, as was observed to me by a distinguished Officer, "no man will enter the Army as a Soldier to get 30 shillings a *month*, who can, by any other means, earn the same sum in a *week!*"

THE SOLDIER'S BOOK—Like the *Livret du Soldat*—each Soldier should have Alphabetically arranged—a list of the Crimes and Punishments, as in the *French* Army. The Annual Article of War, 132, requires every N. C. O. &c. and Soldier to have a book "*to show his Services, Age, Date of Inlistment, and the actual State of his Accounts*"—at the end of this Book should be inserted, as

Theft, &c. has long been ordered in the Bengal Army, but if flogged for Mutinous, or highly insubordinate conduct—the discharge of the Man and return to his family, would imply that disgrace attached to its infliction; but if punishment degrades, surely imprisonment must equally do so.

It has been stated that in the *French* Army there were 16,000 *punishments in one year, of which there were* 400 *Sentences of Death*, while in the British army there were only *two!*—(*Courier*, 18*th September*, 1833.)

Supposing the *French* 2½ times the Amount of the *Brtish* Army, and taking the highest amount in the latter in the year 1827, and the trials will be found to be 5 in the French to 2 in the British Army!—(*See Table No.* 7.)

SOLITARY IMPRISONMENT.—M. G. Sir H. Hardinge in his speech in the House of Commons, 12th March, 1827, stated (in regard to its substitution in lieu of Corporal Punishment) that "he alluded to the Report of the Commissioners on the General Penitentiary, (*Bentham's Bill*, 52 *Geo.* 3, *cap. XLIV.* 20th *April* 1812) of the 17th February, 1827, in which they declare that the system of Punishment by Solitary Confinement was found to be less efficacious than had been originally

follows: for if he can read the *one*, he surely can the *other*!

Crimes.	*Punishments.*
Absence without leave,......	
,, from Guards, ...	
Desertion, ...	
Mutiny, ...	
Post, sleeping on	
,, leaving, ...	
Stealing from Comrades, &c...	

N. B.—2 or 3 pages would suffice for the purpose—and, should be applied to the King's and Company's Armies, (*European and Native.*)

expected, and that in many instances it was productive of no good effect on men and boys: and that it was frequently injurious to the health of the prisoners."

In *America* it was ascertained in 1821, at *Auburn*, that without labor or exercise the confinement for any long period led to insanity, madness, and suicide—the system was condemned in 1833.

The effect of Solitary Confinement must be estimated according to the strength of the Constitution of the Criminal; and *Sir R. Peel*, in the House of Commons, 30th May, 1832, said, that "6 weeks had rendered some insane for the rest of their lives."

"Labor, in the *Philadelphia* prison, (1833) is adopted and kept up as a distraction—while at *Auburn* (1833) the crim[illegible] knows labor as a duty, and not as a relief, and [illegible] precisely the light in which he ought to view it, and must look at it as a member of a civil community."—(*India Gazette, 18th January*, 1831.)

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N. B.—The Author takes this opportunity of returning his grateful thanks to his Brother Officers who have subscribed to his Work.

The names of many more Subscribers are daily expected, but he fears they will arrive too late for insertion in this List.

It is gratifying to him to find that he has met with such a liberal support, in the publication of a Work which he hopes will, in some degree, give satisfaction to his very numerous Subscribers—an extension of the Plan originally proposed, has created some delay—and the constantly increasing number of Subscribers, has rendered it necessary to strike off more Copies, and to make a reprint of parts of the Work, at several periods, during the course of its publication.

W. H.



THE ANNUAL AND E. I. COMPANY's MUTINY ACTS.

PUNISHMENT OF MUTINY, DESERTION, AND OTHER CRIMES; BY DEATH; TRANSPORTATION; AND OTHER PUNISHMENTS. Section 1. 4 Geo. IV. c. 81.

1.—"That if any person who is or shall be Commissioned or in Pay as an Officer" (1)—The same in Clause 1, Annual Mutiny Act. The wording of the Clause should be—"That if any person who is or shall be Commissioned or in Pay, *or on Half-pay*, (2) *or hold a Brevet Commission above his Regimental Rank without Pay*"—"or who is or shall be enlisted or in Pay as a N. C. O. or Soldier," (3) *or in any other Military capacity.*

2.—I think the following Articles of Section XII. of the Company's Articles of War should, as liable to the Punishment of Death, or Transportation, be included in this Section of the Mutiny Act:—

Art. XI. "Violence to persons bringing Provisions to the Camp or Quarters."

(1) To add, or "while under Suspension from Rank, Pay, and Allowances" if Suspension shall be retained as a Punishment.

(2) Simmons p. 10, ed. 1835, states, that Tytler declares, on the most indisputable Authority, that the words "Commissioned or in Pay," were not intended to include Officers on Half Pay; but those holding Brevet Commissions without Pay. Lt. Jas. Blake, on H. P. was tried, in May 1805, and so described in the Charge. Also, Lt. John Mahon, H. P. 8th W. I. Regt. in 1819. And Bt. Lt.-Col. Baley, H. P. 98th Regt., for Unofficer-like conduct in January 1826, placed on H. P. in November 1828.

Since both H. P. and Brevet Officers are considered amenable, it would be more correct to declare them so by Enactment.

(3) Simmons p. 14, states that "Masters of Bands, Serjt. School Masters, Serjt. Armourers, Drummers and others who, though not inlisted or attested, are in the receipt of Pay as N. C. O. and Soldiers," are included in the term "Soldier." He does not recollect that, except Band Masters, who receive sometimes a salary without being inlisted, to which some object,—all the above persons are Serjeants in the Regiment. Such Band-Masters must still be considered as Camp-Followers; and, though not subject to the M. A. and Articles of War, for Mily. Crimes; would, in places where other Soldiers are tried for Civil Crimes, such as Murder, &c. be triable by a Genl. Court Martial for such crimes.

Art. XII. "Forcing a Safe-guard."

Art. XIII. "Making known the Watch-word, or giving a false one."

Art. XIV. "Making false Alarms in Camp or Quarters."

Art. XVI. "Relieving or harbouring an Enemy."

Art. XVIII. "Going in search of Plunder."

Art. XIX. "Casting away Arms or Ammunition."

3.—There are similar omissions in Clause 1 of the Annual Mutiny Act; for, though His Majesty is authorized to frame Articles of War, extending to Punishments less than Death, or Transportation for Crimes committed within the United Kingdom of Great Britain, Ireland, or the British Isles; and even to the above extent when committed out of Great Britain, &c.: still I am of opinion that such Crimes as are punishable with Death, or Transportation in Great Britain, or in the Company's Provinces in the East Indies or elsewhere, should be provided for by Legislative Enactment: His Majesty's Prerogative in cases of Articles of War for such Crimes committed out of Great Britain might be conceded, perhaps, for the sake of the improvement.

4.—My object is to produce uniformity in the Military Code, and as the Articles of War are framed upon the principle of a graduated scale of Punishments; so should the Mutiny Act be arranged, and all Crimes punishable with Death or Transportation ought to be classed under distinct heads in the Act; and not partly under Clause 1, and partly under Articles 6 to 18; all of which I therefore recommend be included in Clause 1.

5.—The concluding words of Section I., and of Clause 1, "shall suffer DEATH, or such other Punishment (4) as by a Court Martial shall be awarded,"—should be "DEATH; TRANSPORTATION; or such other Punishment *or Punishments,* as by a *General* Court Martial shall be awarded," as laid down in Articles 7 and 17.

6.—I would also suggest, that the Crimes punishable under Clause 1, should be detailed as in the

(4) "Punishments" in Section I., an additional Punishment under Clauses 7 and 11.

Articles of War, thus :—or "Who shall desert from our Service (whether or not he shall re-enter or re-enlist in the same) :— Art. 7.

(5) "Shall, if a Soldier, suffer DEATH ; TRANSPORTATION, or such other Punishment as by a General Court-Martial shall be awarded." By this arrangement the Code will be rendered more simple. SENTENCE.

PERSONS ACCUSED OF THE CRIMES OF MURDER, &c. TRIED BY GENERAL COURTS-MARTIAL ; IF MORE THAN 120 MILES FROM THE CITIES OF CALCUTTA ; MADRAS ; AND BOMBAY.

1.—The Act should give authority without any Warrant, and for the reasons assigned under Section XV. Section II.

2.—As the Act has been in force more than 12 years, it might be advisable to try these Crimes when committed *within* 120 miles of the Cities of Calcutta, &c. There are 4-5ths of the European Troops, in Bengal, *out* of the above limit ; as the trials would not then be liable to delay in awaiting the commencement of the Sessions, and unless they were tried before other Cases, further delay may ensue. Suppose again the Regiment or Company to be under Orders to proceed to the Upper Provinces, in fact to have marched before the Trial was commenced in the Supreme Court—Officers, Soldiers and others belonging to the Troops may be detained in Calcutta. (6)

3.—Immediate trial does not take place—but, what is of most importance, the Regiment loses the benefit to be derived from the example if a Capital Case ; the men lose sight of the offender from the moment he is made over to the Civil Power. The Author recollects that in the House of Commons some Members objected to such Trials by General Courts-Martial by Officers of the Army, but the then President of the Board of Control (Mr. Wynn) satisfied the House on this

(5) This word draws attention to the Punishment.

(6) The Author touched upon this subject in note 3, p. 738, hi first Work (1821).

point (7); and assured Honorable Members that the Officers of the Army were men of good education. (8)

4.—The Crimes triable under this Section are, " Murder, Theft, Robbery, Rape, or any other Crime which is Capital by the Laws of *England*." The 102nd Article of War adds, " Treason, Coining, or

(7) Now, (G. O. C. C., 25th June 1832), no Officer of less than 6 years' service in the Army is appointed a Member of a General Court Martial, if Officers of such standing are procurable. Many are Ensigns after the above period, and there are always 12 out of 15 Officers, composing the Court of 25 or more years of age, while 21 years is the legal age of Jurors, and as Military Men, of the present day, have as much knowledge as persons who are usually Jurors, the Author cannot perceive the utility of the exception in cases of Trials within 120 miles of Calcutta, &c. Besides the Work by Captain Simmons, the Author has, during the last 14 years, himself published three Works, and many other Officers daily write upon all interesting or doubtful points, so that there is no want of information in regard to judicial duties. A Prisoner can suffer no injury by any illegal Act of a Court Martial though tried for Murder, as Section IV. 4 Geo. 4. c. 81 requires the Concurrence of the G. G. or Govr. in Council, before the Execution of the Sentence—the Securities therefore is four-fold—1, the Judgment of the J. A. G.—2, Of the Comr. in Chief.—3, Of the G. G. or Govr. in Council.—4, If required that of the Advocate General—and may be that of the Judges of the Supreme Court.

As Military Men have more leisure than persons who are usually Jurors, and we have a reading public in the Indian Army—it is impossible to conceive any valid, or reasonable, objection to trial by Military Courts in *all* Cases—the extension of trial in the Moofusil of Cases where Europeans are concerned under Act XI. of 1836—(the extended application of Section 107 of 53 Geo. 3. c. 155), would seem to open the Field for Improvement in Military Jurisprudence.

It is well known that tho', as observed by Lord Brougham, (Speech on Criminal Law) there are more shades of difference in the Cases of Murder than in any other Crime, still in the Army such Cases are usually more simple in their proofs—there are no such Cases as those of Eugene Aram; the Marr's; Mr. Parker's; Hemming's, &c.—We have no cases wherein you must travel back to distant time—or wherein a complexity of circumstances occur likely to distract the mind.—In the Army Crimes proceed from Drunkenness, and the fatal Act is the result—so that, as to time, seldom more than 2 or 3 months are comprised in the Affair.

If common sense be one of the best qualifications of a Juror Officers in the Army certainly possess that together with qualities of a higher degree. Besides the Men should in the Colonies and in the East Indies be taught to look to their Officers as their Judges; as well as Military Superiors: and there must often be occurrences of a Military nature mixed up with Civil Crimes committed in or near Barracks best known to Military Men—I would therefore, strongly urge that the Legislature should be induced to extend the trial by Gl. Cts. Ml. " in all Cases in the East Indies."

(8) The March of Intellect pervades all Ranks, and I hesitate not to assert, that no Army in the World possesses men of better

Clipping the Coin." It would be better to state, "Capital or any Crime punishable under the "*Act for the Administration of Criminal Justice in the East Indies,*" (9) *or any other Act which shall at the time be in force;* for *all* the Laws of England do not extend to India: such Enactment would declare, at once, that the Army in India is amenable to the Act. (10)

102nd Art. of War.

5.—The 102nd Annual Article of War recites, that —"Any Officer or Soldier who may be serving, &c. where there is no Civil Jurisdiction in force, by our Appointment, or under our Authority, who shall be accused of Treason, Murder, &c. shall be tried by a General-Court-Martial."

Capt. Simmons p. 25 states that a Soldier, accused of a Civil Crime, where there is no form of *British-*

Education and Talent, many of whom devote their attention to all subjects, which are calculated to enlarge and improve the human mind.

(9) 9th Geo. 4 c. 74.

(10) In Bengal Officers, Soldiers, and others are tried under the Act, but it is said there has been a doubt at Bombay on the subject. Colonel V. Kennedy in his Work (1832), p. 271 states, that "Genl. Courts Martial cannot try counterfeiting Coin under Section 73, 9th Geo. 4th c. 74 (*the Act*), but must make over the Soldier to the Civil Power." If so, neither can Military Courts try Cases of Murder; thus the Colonel (who seems to have consulted the Advocate General, or if he did not should have done so; if he did both deny the Military jurisdiction) assumes an opinion which is not countenanced by the Advocates General, or Judge Advocates General, of Madras and Bengal. The words of the 127th Section of the Act in question are—"in the same manner, as persons employed *by or in the service of the said United Company* are now by law subject and amenable to the said jurisdiction of H. M.'s Courts of Justice," (the Supreme Courts) are conclusive, for there is a transfer of jurisdiction under Section 11., 4th Geo. 4 c. 74 from the Supreme to the Military Courts. Before the new Act (1829) this transfer was made (1824), and as the Military Courts used, then, the same Laws as the Supreme Courts, it seems difficult to imagine a transfer nominally alone, without the essential qualities of an Act which recites in its Preamble that it is, "for the better Administration of Justice in the East Indies!" or, that a British Legislature should have overlooked the fact, that, otherwise—a Crime committed *within* or *beyond* 120 miles from Calcutta, &c. should be tried by different and more severe Laws—the Act, in question, should have included the provisions of the 39 and 40 of Geo. 3; by which in cases of Murder (contrary to Section 27 of 9 Geo. 4 c. 74) there is a power instead of ordering execution, to sentence to Transportation for Life—if the Supreme Court have this power, the Governor General, or Governor in Council should equally possess it; as, otherwise, Civil and Military persons have not equal advantages.

Civil-Judicature, can no longer claim to be tried by a Court Martial, and according to the Laws of England, if there be a Court of Civil Judicature in force, ([11]) under the Authority of His Majesty."

6.—The Direction, as to Guernsey is, "that all Causes between a Souldier ([12]) and Inhabitant, upon breach of the peace ([13]) the Tryall be left to the Civil Magistrate and the Souldier delivered up to the Civil Officer; and the Offender punished according to the Law of the Place," is by an Order in Council, dated 19th Feb. 1690. It would be right to add the following words after those of the 102nd Article:—

Proposed Amendment to Article 102.

"Any Officer or Soldier who may be serving in, &c., or in any place beyond the Seas, where there is no" *(British)* "Civil Judicature in force, by our Appointment, or under our Authority, and who shall be accused of Treason, Murder, &c., or of any other offence which, if committed in England ([14]) would be a Capital or other Felony—&c.; shall be tried by a General Court Martial: *Provided, that, where there is a Civil Judicature by our Appointment, or under our Authority, as in our British Isles of Guernsey, Jersey, Alderney, Sark and Man, and all Isles thereto, and to England and Ireland and Scotland belonging* ([15]) *on the trial of any Officer or Soldier or other person belonging to our Forces, the Form of Procedure and the Sentence to be passed on Conviction, shall be in Conformity to the Laws of England which may be in force;—any Order in Council or Act of Parliament to the contrary notwithstanding.*"

As to India.

7.—The words "or of any other offence which, if committed in *England*, would be a Capital or other Felony," and "such Sentence nevertheless to be in

([11]) Though it be French, Spanish, Portuguese, or Algerine, which may be "under the Authority," p. 27, it seems that a British Soldier at Guernsey pleads through an Interpreter—that the examinations are in private, and many of the Judges who are to pass Judgment, are not present at the examinations! p. 29.

([12]) "Officer," not named.

([13]) No other Crime is mentioned.

([14]) The Soldier in Guernsey might suffer Death in a Case for which, in England under 7 and 8 Geo. 4, would be less severely punished.

([15]) See Clause 55, M. A. 1835.

conformity to the Common and Statute Law of England;" evidently apply to Cases where the Laws of England are in force; such as at Gibraltar, &c.; but in the East Indies where the Act 9 Geo. 4 c. 74 has been specifically framed for India the words should be "which if committed in England, *or in the East Indies* would be a Capital or other Felony," and "such Sentence nevertheless to be in conformity to the Common and Statute Law of England, *or when our Troops shall be serving in the East Indies, according to the Laws there in force,*" are required; for Section II. of 4 Geo. 4. c. 81. was framed before the 9 Geo. 4. c. 74, and uses the words "Capital by the Laws of England." The latter Act should have pointed out a necessity for the above alteration in Article 102.

Proposed.

And as to Section II. 4 Geo. 4 cap. 81.

8.—The Concurrence of the G. G. or Governor in Council required by Section IV. 4 Geo. 4. c. 81. should have been inserted in Article 102, as to the East Indies. It takes place in point of fact, in regard to Kings (16) as well as Company's Soldiers; for the 4 Geo. 4. c. 81. is still in force; and the above Article should have included this Concurrence in the Sentence, in the East Indies.

9.—The Court may, under Article 102, instead of a Sentence of Death, award one of Transportation as a Felon for Life, or for a certain term of years. (17)

(16) See G. O. H. M.'s Troops in India (and Company's) 14th March 1836. Private Reeves, H. M.'s 13th Light Infantry, tried for Murder sentence "Death"—Approved (Signed) H. Fane, Genl. Comr. in Chief, East Indies.

The Rt. Hon'ble the Govr. Genl of India in Council Concurs, &c.

(Signed) AUCKLAND.
„ A. ROSS.
„ W. MORISON.
„ H. SHAKESPEAR.

(17) The 27th Section of 9 Geo. 4. c. 74 falls short of this in the Case of Murder; but the 39 and 40 Geo. 3. admits of a Sentence of Transportation for *Life* instead of Death,—this rests with the Supreme Court—The II. Section 4 Geo. 4 c. 81, should have this Provision, as well as the 102nd Article of War, in direct terms; for tho' there is a General License, the Law of England, and Section 27—9 Geo. 4. c. 74—makes an exception in the case of Murder—so that

The Recording a Sentence of Death under Section 27. 9. Geo. 4. c. 74, is certainly unfit for Military persons ([18]).

10.—The Commander in Chief under Article 102, can commute a Sentence of Death to Transportation, and so can he under Section VIII. 4 Geo. 4. c. 81. Concurrence in this Case is not laid down in the 102d Article. The IV. ([19]) Section and 102d Article should have this Clause—"provided, &c. that in all and every case wherein a Sentence of Death or Transportation shall be pronounced for any such Capital Offence, *or wherein a Sentence of Death shall be commuted to one of Transportation, for any such Offence, committed at, &c.," the Governor General or Governor in Council shall concur in such commuted Sentence.* This Concurrence is, however, always obtained. ([20])

11.—The King reserves to himself the power under Article 102, instead of causing a Sentence of Death to be executed; to order Transportation for Life or term of years. His power, I apprehend, is only meant to apply to Great Britain, Ireland, Gibraltar, &c., but not to the East Indies; this should not apply to India—after the concluding words—" as to us, &c. shall seem to be most just and fitting"—I would add—" *except the trial be* held in the East Indies." ([21])

the words "according to the Law of England" in the 102nd Article and in Section II. 4. Geo. 4. c. 81—are at variance with the Act.

([18]) The 27 Section of 9 Geo. 4. c. 81 should except Military Persons—Tho' there is a G. O. by the Comr. in Chief in India dated 9th March 1836, declaring that " His Excellency the Comr. in Chief in " India does not find in the Mutiny Act, any Clause authorizing this " sort of 'record of Sentence of Death,'" commenting on the Case of a Madras Artillery man " Owen Byrne, sentenced to be hanged (recorded;) but reduced to transportation for 7 years; I respectfully submit the propriety of this forming part of a Declaratory Act for India.

([19]) Section VIII. should also be altered in respect of Civil Crimes.

([20]) Upon the opinion of Mr. Advocate General Pearson (Calcutta). But, surely it should be provided for by enactment.

([21]) It would be useless to send home such Cases, and thus cause a delay and imprisonment of 10 or 12 months. The Charter of Justice gives the Supreme Court a Reprieve pending a reference to the King. (Mr. Clarke's Analysis of 9th Geo. 4 c. 74, S. 27 and 28, p. 78, (1831), but this should be altered, and the power left to the Supreme Court; or G. G. of India in Council to reprieve, &c.

SENTENCES IN CASES OF MURDER, &c. NOT TO BE CARRIED INTO EXECUTION TILL CONFIRMED BY THE COMR. IN CHIEF; WITH THE CONCURRENCE OF THE GOVR. GENL. OR GOVR. IN COUNCIL.

"Provided always, and be it enacted, that in all and every Case wherein a Sentence of Death or Transportation shall be pronounced for any such Capital Offence, committed at any Place situate above 120 Miles from the Presidencies of Ft. Wm.; Ft. St. George; and Bombay respectively, and being *within* the Territories under the Govt. of the said United Company, such Sentence shall not be carried into Execution until Confirmed by the General or other Officer Comg. at the Presidency, (22) with the Concurrence (23) of the Govr. Genl. (24) in Council, or Govr. in Council, &c. tried"—there should be this Clause added:—*Provided that where any such Sentence of Death shall be commuted to Transportation, by the General Comg. in Chief at the Presidency, the same shall, also, have the Concurrence of the Govr. Genl., or Govr. in Council.* (24) Section IV. 4 Geo. 4, c. 81. Clause proposed.

(22) "Comg. in Chief at the Presidency," would be more correct—Section VIII. explains it to be the "Officer Comg in Chief the Forces of the Presy."—Such Concurrence is only *within* the Company's Territories.

(23) It has been said that the Concurrence of the G. G. in Council should be simultaneous with the Comr. in Chief's Confirmation—But it is clear that if the Concurrence be obtained before the Sentence is executed, the Provision of the Act is complied with; and if the Comr. in Chief be not in Calcutta the thing is impossible—In one Case (*Death*) the Comr. in Chief Confirmed the Sentence "subject to the Concurrence of the G. G in C."—(G. O. C. C 25th Feb. 1825). The Com. in Chief, when in Calcutta, does not always sign the Concurrence as a Member of Council (G. O. C. C. 14th May 1836). It seems superfluous, as H. E. has already Confirmed the Sentence as Comr. in Chief, so that the Concurrence as Member of Council is implied; and when he is out of Calcutta, he cannot—without delay—Concur as Member of Council, and without sending the Proceedings to him, and his returning them.

(24) The Power of Commutation is contained in Section VIII. of the Act—the words "in *all* Cases," apply, it is said by Mr. Advte. General (Pearson), to *Civil* as well as to *Military* Cases—McNaghten's Annotations, p. 61 (1828). Such is the Practice; as in the Case of Private John Killeen, H. M.'s 44th Foot, Stabbing another Private with intent to Murder, &c. Sentence Death—Ap-

TRANSPORTATION (NOW FOR DESERTION ONLY IN MILITARY CASES) SHOULD BE EXTENDED TO OTHER CRIMES IN THE COMPANY'S ACT.

Section VII. 4 Geo. 4, c. 81.

In the Annual Articles of War for 1835, besides the Case of Desertion, Transportation is awardable in the following Cases:—

Article 6.—" Mutiny, beginning, exciting, causing, or joining in;—or being present at and not using his utmost Endeavour to suppress; or knowing of and not giving Information thereof."

Article 8.—Holding Correspondence with, or giving Intelligence to the Enemy, directly or indirectly;—or relieving with Money, Victuals, or Ammunition; or knowingly harbouring or protecting an Enemy.

Article 9.—Misbehaving before the Enemy, or shamefully abandoning any Garrison, &c. or compelling, or speaking words, or using other means to induce, &c. to deliver up to the Enemy, or to abandon, any Garrison, &c.

Article 10.—Leaving his Comg. Officer, or Post, &c. to go in Search of Plunder.

Article 11.—Striking Superior Officer, or drawing or offering to draw, or lifting up any Weapon or offering any Violence against him; being in the Execution of his Office.

Article 12.—Disobeying any lawful Commands of his Superior Officer..

proved; but commute the Sentence of Death to Transportation as a Felon for Life. (Signed) Dalhousie, Comr. in Chief.

The V. P. in Council Concurs in the Commuted Sentence of Transportation for Life. (Signed) C. T. Metcalfe.

" W. Blunt. G. O. K. T. 21st Jany. and G. O. C. C. 1st Feb. 1831.

The obvious intention of Section IV. is to require the Concurrence of the G. G. in C., &c. not merely as to the Sentence, but the Proceedings, and *Conviction*—as a Security to the Prisoner—and if it is proper to have the Concurrence as to a Sentence of Transportation passed by the Court, it is equally so, if not more so, in the Case of Commutation; for the Court have passed a Sentence of *Death*, and the Comr. in Chief commutes it—here the Case is of more consequence, perhaps, than in that for which the Court may Sentence to Transportation—this Concurrence seems general in the Colonies—Instr. to Govrs., &c. 20th Novr. 1824—Simmons, p. 331—ed. 1835.

Article 13.—*(In Foreign Parts)* "Violence to Persons bringing Provisions, &c.; forcing a Safe-Guard; or breaking into Houses, &c."

Article 14.—"Treacherously making known the Watch-Word to any Person not entitled."

Article 15.—Creating False Alarms in Action, Camp, &c. by discharging Fire Arms, drawing Swords, beating Drums, making Signals, using Words, or by any means, &c.

Article 16.—Casting away Arms or Ammunition, in presence of an Enemy.

Article 17.—Sleeping on, or leaving Post, before regularly relieved.

SENTENCE.—Shall, if a Soldier, suffer DEATH, TRANSPORTATION; or such other Punishment as by a General Court Martial shall be awarded.

2.—The Punishment in the above Cases should be Transportation, in the E. I. Company's, as well as in H. M.'s Service [25]: and where Death is, or may be, awardable. The above to be in Company's M. A.

THE POWER OF COMMUTING SENTENCES OF DEATH TO TRANSPORTATION.

1.—This Power was given to the Officer Comg. in Chief the Forces at each Presidency in 1823, as to the E. I. Company's Troops; but, not as to H. M.'s Troops in India, till 1831, (Clause 7 M. A.) Section VIII. 4 Geo. 4, c. 81.

2.—The words line 9—"instead of causing such Sentence" (Death) "to be carried into Execution, to *order* [26] the Offender to be Transported as a Felon

[25] Under the 4th Geo. 4, c. 81—Transportation is only awardable in the Case of *Desertion—Section VII.*—and returning from Transportation, without Leave—*Section VIII.* When the Act was framed (1823),—Mutiny was not punishable by Transportation by the Ann. M. A. and Articles of War. It is now awardable in all Cases of "Death or other Punishment"—and it should be extended to the Company's Army—A Court may, certainly, award a Sentence of Death, and recommend the Prisoner to be Transported: but, why should there be distinction between King's and Company's Soldiers?

[26] The Word "*order*" gives the Comr. in Chief full Power without the Prisoner's Consent—[Opinion of late J. A. G. (Sir R. Grant) Lr. 25th June 1832]—In Cases of Murder Sentences of Death

for Life, or for a certain term of years," is explicit. [27] Death has been commuted (on Condition) to 2 years' Solitary Imprisonment, [28] which certainly is not in accordance with this Section; but would be a proper Enactment.

Proposed.

3.—This Power of Commutation as to Comg. Officers of Regts. and those in Command of inferior Rank to the Comr. in Chief, is prohibited; but as to the Comr. in Chief, it should be allowed to him to commute *any* Sentence, because it will be seen, at once, that where Soldiers are sentenced to Transportation, if he shall think it not a proper Punishment, [29] the Proceedings must be returned, and in the Upper Provinces of India, a delay of a month or more may occur.

Proposed.

Deserters may be Sentenced to General Service.

Section IX. 4 Geo. 4, c. 81.

I have never known it used in the Company's Army. It is, still, continued in the Annual Articles of War 1835. Clause 7; tho' it has been prohibited for many years. [30]

A mark on Deserters (D.)

1.—In H. M.'s Service there is a Circular from the War Office, 8th April, 1829, by which Genl. Officers,

have been commuted to Transportation for Life (G. O. C. C. 14th March, 1829, and 16th July, 1833)—In the Native Articles of War there is no Authority to commute by the Articles of War—In the Case of a Native Soldier Sentenced to Death, the Capital Punishment was remitted, and he was placed on the Roads for 10 Years—he consenting to the Commutation—(G. O. C. C. 23rd June, 1831.)

Proposed.

[27] Transportation for Life should, likewise, be reducible by the Comr. in Chief, to 14 and 7 years, the usual lesser periods—for, why should Imprisonment be mitigated—(G. O. C. C. 19th Sept. 1825, &c.)—and not the other Punishment?

[28] G. O. C. C. 4th May, 1830—Mutiny—a Gunner H. Arty.

[29] I know of such Cases in my Official Capacity, and numerous Cases might be cited—The Argument has been—that the Sentence of Transportation is what the Prisoner desired—it is therefore, to him no Punishment—and then the Court, after a month's delay, award "Imprisonment."

Proposed.

[30] Circular H. G. 25th Jany. 1826. Would it not be better to erase it from the M. A.—than to retain it, and forbid it?

in case a District-Court-Martial should omit the Punishment, are directed to require of the Court, in a Separate Letter appended to their Proceedings, their reasons for not Sentencing the Prisoner to suffer that mode of Punishment, in addition to any other which the Court may award.

2.—It surely would be far more simple to insert in the 11th Clause of the M. A., instead of the words "it shall be lawful, &c. to direct that the Offender be "marked, &c. with the Letter (D)—to order '*and* "*the Court shall, in addition to any other Punish-* "*ment, direct the Prisoner to be marked with the* "*Letter* (D)' "—and the same in the XI. Section now under review. ([31]) **Proposed.**

WARRANT TO HOLD GENERAL COURTS-MARTIAL; NONE LOWER THAN A FIELD-OFFICER CAN CONVENE—SHOULD BE EXTENDED TO CAPTAINS.

1.—In this Section Authority is given to His Majesty to grant a Warrant unto the Court of Directors of the U. E. I. Company, by virtue of which the Company have power to empower their Govr. Genl. and Govrs. in Council, &c. to appoint Courts Martial; and to empower the General or other Officer Comg. any Body of their Forces to appoint General Courts-Martial—and to authorize any Officer, not below the degree of Field Officers, to convene such General Courts-Martial. **Section XV. 4 Geo. 4, c. 81. Warrant generally, unnecessary.**

2.—There does not seem any necessity for these 4 Warrants, when the Act should contain ample Authority. ([32]) The Change of a Comr. in Chief in India, if on the spot even, (in Calcutta) must occasion Delay— **Proposed. As to Comr.-in-Chief.**

([31]) Tho' the Circular came out in 1829, I only knew of it lately—I never saw it, nor heard of it before—Circulars if to be useful, should be circulated to all Genl. Officers—In the Sirhind Division it was not, tho' but few Circulars are sent to D. J. A. Genl. regarding H. M.'s Troops—I did read and note all that came to Division Head Qrs. but I never saw the above till I purchased Capt. Simmons' Work. (1835.)

([32]) "General" omitted before the word "Courts, &c." as to Govr. Gen.? Some of the first Mutiny Acts authorized the General of the Army to assemble Gl. Cts. Martial directly, without any Warrant from the Sovereign.—*Simmons*, p. 2. 1835.

But if the Comr. in Chief were to die, [33] or be superseded in the Upper Provinces, [34] there would be much more Delay before the Govt. issued a Warrant to the New Comr. in Chief; who, moreover, would have to issue his Warrants to Genl. Officers Comg. Divisions and Field Forces. A Delay of 2 Months took place on the Succession of Lord W. C. Bentinck, as Comr. in Chief, by which 3 Soldiers, at Kurnal, were kept in extra Confinement for the above period.

3.—To prevent any Delay, if Warrants are still to be preserved, I would recommend that there should be a Clause in the Comr. in Chief's Warrant to this Effect —*Provided, that in Case of the Death, Resignation, or Removal of the said Comr. in Chief, all Acts which may lawfully be done under this Warrant, shall continue to be done, and shall be exercised by the Officers who shall succeed to the Chief Command;* [35] *until he shall receive a Warrant; in the same manner as if such Warrant had been granted to him.*"

Proposed. As to Genl. Officers. 4.—The Warrants from the Comr. in Chief to General and other Officers Comr. Divisions and Field Forces, should have a similar Clause. These Warrants should contain, also, Authority [36] to try Officers and Soldiers, though belonging to another Division, who may be doing Duty in, or detached on Command in, or be on Leave of Absence in, or who may have Committed a Crime in one Division and be removed to another; for though a G. O. would, of course, on the report of a Case to Head Quarters, be issued if there were not a Warrant, still here must be Delay. [37]

(33) Marq. of Cornwallis G. G. and C. in C. who died in 1805, at Ghazeepore, when Lord Lake was, I believe, at Cawnpoor.

(34) As Genl. Sir E. Barnes was in 1833.

(35) And in the 5th Clause Annl. M. A. as to H. M.'s Forces in India.

(36) This Section to contain such a Clause if Warrants be dispensed with; for which I see no reasonable doubt.

Proposed. (37) There is a Circular from the Adjt. Genl. H. M. Forces in India, ordering the Trial of N. C. O. and Soldiers, without reference—sending a Copy of the Charge the Day the Trial is ordered—It is usual in the Cases of Officers (European and Native) to make a previous Report to Head Quarters.—The Warrant, however, gives direct Authority to try even all Cases without any reference---In the Case of District Courts Martial there is another Warrant, directed to the

5.—The Warrants to the Deputy Judge Advocates-General of Divisions, in Bengal, authorize them to Officiate in all Cases, on the trial of King's and Company's Officers, &c. within the Limits of the Presidencies of Bengal and Agra. It is unsettled by any positive Enactment how far this Instrument is valid on the Death, Resignation, or Removal of a Comr. in Chief by whom it is granted. (38) It is clear that as J. A. are nominated by the Comr. in Chief, but appointed in Govt. Orders, such Govt. Orders may contain sufficient and general authority to act till another Order cancelled the former; and if Warrants are retained *pro formâ,* still the G. O. by Govt. should render it unnecessary to await the arrival of a new Warrant from the succeeding Comr. in Chief—and the Genl. Officer without his Warrant cannot issue one himself. As to D. J. A. G. Proposed.

6.—The Warrant to the President of a Genl. Ct. Martial is granted by the Genl. Officers Comg. Divisions, &c., sometimes by the Comr. in Chief, sometimes authority is given by a G. O. (39) But the issu- As to President.

Genl. Officers Comg. Divisions, or Officer "not under the Rank of a Lt.-Colonel"—Now, as the General Warrant allows of the trial by Genl. *and other* Cts. Martial, it does seem unnecessary to have a Separate Warrant for District Courts—The Officers Comg. a Division may be a Major, and Major Harris, 63rd N. I., Com. at Dinapore, in 1833, actually ordered the Assembly of a *General* Court Martial—but, not being a *Lt.-Colonel he* held no Warrant to hold a *District* Court; so that he could direct the assembly of the *Superior* but not that of the *Inferior* Court Martial! and must have applied to Head Quarters for leave. Hence I should recommend if Warrants are continued, that, in India, conformably with the Mutiny Acts, the words "not under the Rank of a *Major*" (or a *Captain*) should be used instead of "not under the Rank of a *Lt.-Colonel.*" Proposed.

(38) It was said in Reply to a J. A. who raised a difficulty on this subject "Your Warrant is good till the new Comr. in Chief sends a fresh one;" (Letter Adj. Genl.); but such Warrants have no Clause to this Effect. If these Warrants were furnished by Govt., as a Commission to the J. A., they would be in force while he was in office—the Genl. Officer's Tour of Command is for 5 years, but a Govt. Commission to the same effect, as the Warrant, might be issued to him when first appointed—A Clause in the Act, to be in force till repealed, would best meet all Cases. The Act, or the Warrant to the General Officer should contain a Clause—that in District Courts Martial—if the Court recommend a Discharge, with Ignominy, such Discharge requires the Confirmation of the Comr. in Chief.

(39) At Home these Warrants often include the President, and even Members, and the Charges—It would be better to omit the Charges; and to insert the latter in a distinct Document. Proposed.

ing the President's name in Division, &c. Orders, as in the case of Inferior Courts, would be the shortest Plan—or I would recommend these words—" The Senior Officer to be the President." (40)

Proposed.

7.—The Reading of the 3 Warrants (41) above recited occupies so much time of the Court unnecessarily, which should, if possible, be avoided : for, whatever may have been the necessity for Warrants in former Times, the Annual Mutiny Act should, now, be the only Authority. It is true the Proposition may be said to affect the Prerogative of the King, but surely it is one as to Form only, and does not affect any legal Right—its Right may be retained in a Clause thus, " Provided that H. M. reserves His Right to issue Warrants, &c." A Warrant to be in force till replaced by another, might restrict Trials, without reference to Head-Quarters, to the Case of N. C. O. and Soldiers. If I have shown Cause why they may be dispensed with, I should hope the recommendation coming from so humble an Individual will not be a bar to their discontinuance. For as in the Kurnal Case, necessity may require that delay shall not take place.

APPEAL—NONE TRIED A SECOND TIME FOR THE SAME OFFENCE, UNLESS IN CASES OF APPEAL FROM REGTL. TO GENERAL COURTS-MARTIAL —LIABLE TO PROCEEDINGS OF A COURT OF LAW—REVISION ONLY ONCE.

Section XVI. 4 Geo. 4, c. 81.

1.—The 9th line has these words—" and that no Sentence given by any Court-Martial, &c. shall be liable to be revised more than once." The words of Clause 16, Annl. M. A. are, "and that no *Finding Opinion*, or Sentence, &c." It is obvious that the two words omitted should be introduced into the obove Sec.; for the word " *Finding*," is the Verdict of the Court ;

Proposed.

(40) So that by appointing 2 Members above the legal number (13, &c.)—if the President were challenged, the next Senior Officer might become President, without any Delay or Reference—provided his rank, as should be the Case, was sufficient.

(41) Comr. in Chief's to Genl. Officer—the Genl. Officer's to the President—and the Comr. in Chief's to the J. A.

and an "*Opinion*" (42) is given by a Court in relation to other Matter than the bare fact of Convicting, or Acquitting, and is sometimes expressed in the shape of Remarks (42) as to the Charges, Prosecutor, Witnesses, &c. And it will be obvious that though a "*Sentence*" may be legally borne out by the Evidence, still the "*Finding*" may be incorrect on some Charges or Counts, though the "*Sentence*," subject to a correction of the "*Finding*," shall be ultimately Approved; as well as, that there may be "*Opinions*" expressed which the Approving Authority may think should not be countenanced; though a Revision would seldom be Ordered in the latter Case.

2.—There is also the omission in this Section, of the following important Words of the 16th Clause, "*and no Witness shall be examined, nor shall any "Evidence be received by the Court on such Revision.*" (43) But there should be added these Words—"*Provided Evidence shall have been taken on all the Charges,*" (44) Proposed.

(42) In the case of Lt. Colonel Dennie, H. M.'s 13th Light Infy., remarks by the Court—"The Court, &c. feels itself called upon to express an *Opinion*"—A Revision took place, and the Court recorded—"the Court, &c. having reconsidered its former *Finding* upon "1st to 14th and 18th Charges, &c. does hereby confirm the same, "and sees no reason to cancel its *remarks*, and adhere to them." G. O. H. G. 29th Feb. 1836—G. O. H. M. F. in India 15th, and G. O. C. C. 28th July, 1836—I merely quote this Case, to explain the word "*opinion*" used as above recited.

(43) G. O. C. C. 1st June 1815, prohibited this in the Bengal Army, as noticed by the Author in his 1st Work (1821) p. 820—and in the 2d Work (1825) p. 936—before it was prohibited in the Annl. M. A.—An Enactment if proper in the King's should be so in the Company's M. A.

(44) Thus, in the Case of Col. Cawthorne, Westminster Regt. of Militia, tried 27th Nov. 1795, on 14 Charges, and wherein the Court had only taken evidence on 7 Charges and Cashiered that Officer, H. M. directed the remaining 7 Charges to be investigated—p. 622 of my Case Book, note 42.

It has also been stated (Lr. Adjt. Genl. H. M. F. in India) that "no fresh Evidence can be taken on appeal from a Regtl. to a Genl. Ct. Martial."—I must consider this opinion erroneous. In the Case of Private Leonard, H. C. European Regt. tried in 1817—the Soldier complained of not having seen the Charge before he came into Court, and that there was no Interpreter tho' there were Native Witnesses—In this Case the Prisoner examined the President and Members of the Regtl. Court Martial; his Comg. Officer; other Witnesses and *the Native Witnesses* to prove that he did not as charged against him —"defraud the Native Merchant"—Case Book, p. 219.

CONSTITUTION OF GENERAL COURTS-MARTIAL.

Section XIX. 4 Geo. 4. C. 81.

1.—A General Court-Martial is to consist of "13 or 9 Commissioned Officers, as the Case may require." (44). Of 7 Officers if held at Sumatra, or P. W. Island, or at Singapoor. (45)

2.—It is deserving of consideration whether there might not be some Improvement in the Constitution of Gl. Cts. Martial—And I see no reason why 9 Members should not be the Minimum, in the East Indies in the Cases of N. C. O. Soldiers, and others, in both Services; where the Punishment shall be less than Death, this would require 4 Officers less and give them for other duties. (46). A General Court Martial in the Navy, in Cases, where more cannot be had, consists of 5 Officers—of 3 Captains and 2 Commanders,—and for the trial even of Officers, and grave offences. As a Revision may be ordered, Officers are prevented going on Command, or leaving the Station for 2 or more Months. I have known Cases of Officers on Gl. Ct. Martial duty for 9 Months—whereas Officers

May not Evidence have been rejected by the Regtl. Court—or may not the Prisoner be able to prove, what he did not know till after the Regt. Trial—that one of the principal witnesses had perjured himself?—See the Case of Private Patrick Loftus, in Tytler, who was Sentenced to Death, and where the principal Witness had perjured himself! and Judgment reversed. I merely state this to show the possibility of Cases requiring fresh Evidence on Appeals—but not to admit of a litigating spirit: and, tho' general rules are proper, exceptions will occur.

(44) Of 13 if an Officer be tried under Section XXI., *within* the Territories; and of 9 in the Case of N. C. O. and Soldiers, in Cases not Capital or transportable Crimes—if they are, Section XXII. requires 13 to pass a "Sentence of Death, or Transportation."

(45) In the Annl. M. A. Clause 6—13 Officers are required for the trial of Officers and Soldiers and 7 Officers, out of the Company's or King's Dominions—and 5—in Africa, and N. S. Wales—This variance in the two Codes, gives to the Company's Army a *Gl.* Ct. Martial of 9 Officers to try Cases which are not punishable with Death or Transportation, wherein the same are, in the King's Service, triable by a *District* Court—It will be better as I have proposed, to substitute District Courts.

(46) "In the Reign of James 2d (150 years ago) the Gl. Ct. Ml. consisted of 7 Officers—but no Officer under the rank of Captain was a Member"—Simmons, p. 38 (3)—where practical, in Cases for the Trial of Murder, &c. and of Mutiny and Desertion—a Court composed of a F. O. and 8 Captains would be a better Tribunal than a larger Court increased by Subalterns—for "in the multitude of Counsellors there is *not always* wisdom."

should be relieved after being on such duty for a certain time. (47).

DETACHMENT COURTS-MARTIAL OF 3 OFFICERS (AS GENERAL) OUT OF H. M'S. OR COMPANY'S DOMINIONS.

1.—In this Case no Warrant is required. This Section is the same as Clause 12 Annl. M. A. 1835—under this Section line 19, The Persons subject to trial are "*by any N. C. O. or Soldier or other Person serving with or belonging to the Company's Army, &c.*" The 12th Clause line 9—declares "*by any Person serving with, &c.*" The doubt here to be cleared up by Enactment is, whether a *Commissioned* Officer is amenable (48)—it should be distinctly laid down; in the above Section and Clause, the Provisions are different. Section XX. 4 Geo. 4. C. 81.

(47) Those who have not been on these duties in the hot-winds have no conception of the irksomeness of a crowded room—with 15 Members, Prisoners, Sentries, Spectators, &c. I have seen 40 congregated in a room. Besides the defect as to the number of Members, all the Members of a large Court cannot hear the Witnesses so distinctly as they should do—to tell the Witness to "speak out" does not always avail. Fewer Members, and if all were of the rank of Captain, would be an improvement. If the "Shell-Jacket" were allowed, it would be better; as Officers buttoned up to their Chins in their full Dress Cloth Coat, suffer so much that I am seriously of opinion that Sickness, in this Warm Climate, is the result—If the body suffers—and suffer it must—all know that the mind will—I will stake my word that this is a perfectly correct, and not an exaggerated statement—Officers cannot afford to have a Cloth full dress, and one of Camlet—but they might be allowed to wear "Camlet-Shell-Jackets" on Court Martial duty.

(48) Simmons, p. 42 states that "the words *any Person*, must clearly comprehend *Officers*"—but adds (note 3)—In former Acts it ran thus —"any N. C. O. Soldier or *other* Person."—Now, as in other parts of the same Statute, Officers when intended were invariably named first, it is *by no means clear*, that Officers could be understood, or intended to be included in this Case, when opposed to the express provision as to the number of Officers essential to compose Courts for the trial of Officers, and when the general rule for Construction of Statutes is considered, "that where things or persons of an inferior degree are first mentioned, those of a higher dignity, shall not be included under general subsequent words."

Now, in the first place Officers are, under Clause 6, triable *out* of H. M.'s Dominions by 7 Officers, and by 5 Officers in Africa and N. S. W. (so in Section XIX. (Company's) at P. W. Island, &c.)

2.—Neither Clause 12 nor Section XX. (Company's) M. A. give the Rank of the Officer competent to hold these Courts; so that any Officer might; but Clause 5 and Section XV. require the Officer to hold Genl. Cts. Ml. not to be under the degree of a Field Officer—Section XX. should not use the words "The *Genl.* or *other* Officer only," while Clause 12 declares "*any* Officer Comg. any District, Detachment, or *Portion* of His Majesty's Troops"—if a restriction were necessary as to General Courts-Martial, why not in these Detachments—Courts having the Power of
Proposed. passing Sentences of Death? A Captain should be allowed to hold them.

3.—Suppose a Captain who might succeed to the Command of a Detachment, and was to hold such a Court—There is no exclusion in his Case, and no Warrant, as in District Courts, and the Words, "*any Officer,*" as well as "*any Person,*" give to most Military Men at least, a plain, simple, phraseology; a language not susceptible of a quibble—But, if the

In the next place, these Courts are composed of 3 Officers, only *out* of H. M.'s Dominions—the argument, therefore, should be, not as to the requiring 13, but as to 7 or 5 instead of 3 Officers—the King could, under Clause 4—give the same power as under Clause 12—but, it were better to be a Legislative Enactment.

Captain Simmons in his Text gives the apparent true intention of the Clause, by using the words "by *any* Person," for, here, the Construction he has considered had the words remained, as before—"by any *N. C. O.* Soldier, or *other* Persons"—would, legally, apply—the omitting the words "by any *N. C. O. or Soldier*"—and using "*by any Person*"—might equally imply that "*N. C. O, or Soldiers*" were not intended, but some Persons "serving with or belonging to H. M's Armies" undefined—I therefore ask, "Who are those persons?" Why, those "under the immediate Command of any such Officer"—Now are not all his junior Officers, and all N. C. O. and Soldiers, as well as Camp-Followers, and Retainers, &c.?

Proposed. I would recommend the use of the words "*by any Officer, N. C. O. Soldier, or any other Person,*" or, if intended to exclude the Officer—then these words "by any Person, *not being a Commissioned Officer!*"

I wonder Captain Simmons did not recommend such a Clause; instead of giving a clear opinion in his text, and then appending a a note which nullifies his better Opinion—In the one Case, he wrote as an Officer; in the other, as a Lawyer applying an abstract principle of legal Construction; not recollecting that the Legislature has legally admitted the trial of *Officers* by the words "*any Person,*" and that tho' it never before included Officers, it does so now—Tho', unquestionably, as it is a new Enactment, it would be better speci-

Legislature does not so intend its Application, it subjects the Officer Comg. to doubt; at a time perhaps, when the urgency of Service may require his Mind to be directed to Military operations.

NO GENL. COURT MARTIAL UNDER 13 OFFICERS TO PASS SENTENCE OF DEATH OR TRANSPORTATION; UNLESS HELD OUT OF THE COMPANY'S POSSESSIONS.

This Section only includes the Cases of "N. C. O. or Soldiers"—It should have mentioned "Officer." Section XXVII. uses the Words "against *any* Offender"—and Section XIV. Article VI. Articles of War uses the same Words. Section XXII. 4 Geo. 4. C. 81.

CORPORAL OR OTHER PUNISHMENTS FOR IMMORALITIES; MISBEHAVIOUR; NEGLECTS, &c.

1.—In H. M's. Army, under G. O. H. G. 24th August, 1833, the Crimes punishable with Corporal Punishment, are:— Sec. XXVI. 4 Geo. 4. C. 81.

i.—Mutiny—Insubordination—and Violence, or using, or offering Violence to Superior Officers.

ii.—Drunkenness on Duty.

iii.—Sale of, or making away with, Arms, Ammunition, Accoutrements, or Necessaries, stealing from Comrades, or other disgraceful Conduct.

2.—This Punishment is usually applied in the Company's Army (European). By the 79th Annl. Article of War, 200 Lashes, and by a District-Court-Martial, Clause 77, 300 Lashes may be inflicted.

fically to declare the intention—But, were any Officer to be so tried, he could not sustain an Action for an illegal trial—as there is no clause of exemption; and the words "*any Person*" admit legally, of no dispute—But Mily. men should have clear Enactments,—the fact that *some* misunderstand the Clause (and so may Courts-Martial) points out the necessity for a declarative Clause.

3.—In the Company's Army (European) there is no positive Limit (49)—whatever be the Limit in the King's, should be the same in the Company's Army.

4.—Imprisonment is not limited in this or any other (Company's) Section. In the 79th Annl. Article of War, 1835—30 Days Imprisonment, or 20 Days Solitary Confinement are allowed—or it may be part Solitary —but in such Case, the whole Imprisonment, including the Solitary part thereof, shall not exceed 20 Days. Imprisonment, Solitary or otherwise, as formerly used in H. M's. Service (50) is under Section XXIII. used in the Company's Army.

Oath to Witnesses omitted in the Company's Mutiny-Act, and Articles of War.

Sec. XXVII. 4 Geo. 4. C. 81. 1.—The Section simply gives the Power to Administer an Oath, or, in the Case of Natives, an Oath or Solemn Declaration—The Words of the usual Oath are contained in 91st Annual Article of War, as follows :—

"The Evidence which you shall give before this Court, shall be the Truth, the whole Truth, and nothing but the Truth, so help you God."

2.—By Section 37—9 Geo. 4. c. 74, " All Persons who by any Laws are now required to take an Oath upon the Holy Evangelists, or in any other Manner,

(49) G. O. C. C. 1st Feb. 1821 requires the Confirmation of the Genl. Officer Comg. the Division, &c. if more than 300 Lashes are awarded; and I never knew, of late years, more to be inflicted.

(50) There are Circulars in H. M,'s Army limiting Imprisonment, Solitary or otherwise, as to amount—but the Comr. in Chief can reduce the Sentences of Genl. Courts, and as these Circulars are for the Guidance of Genl. Officers Comg. Districts, and in the Case of District Courts ;—a Limit as to Genl. Cts. Martial might render the moral effect less; for it is not the severity of the infliction, but the certainty of Punishment, that proves a corrective—and the amount should be left to the Court—reducible by the Authority which confirms Genl. Courts Martial—In the Case of District, or Regtl. Courts, the Control of the Comr. in Chief can only be with reference to future Cases ; and in these Cases there is a distinction—The Monthly Registers of Courts held in Divisions are sent to the Adjutant, and Judge Advocate, General—and District Courts Martial are sent to the Judge Advocate Genl. for Transmission to the J. A. G. in London.

may, instead thereof, be Sworn according to the Forms of their respective Religions."—These words should be included in this Section.

3.—With regard to *Natives* of India—" in such Manner and Form as the Court shall deem sufficiently binding upon his or her Conscience." ([51]).

Oath to the President and Members of a Genl. and other Court Martial.

1.—Since the New Charter the present Oath requires Correction ([52])—The Words—" you shall well and truly try and determine, according to your Evidence, in the Matter now before you.—So help you God." Are the same in the Anul. M. A. p. 96. The Words of the Oath should be " in the *Matters* now before You, *or shall be brought before You on the present Trial.*" ([53]) Sec. XXVII. 4 Geo. 4. C. 81.

2—I, A. B. do swear that I will duly administer Justice according to the *Mutiny Act*, Rules, and Articles of War for the Government of the Officers, Soldiers, and others in the Service of the *East India Company (or according to an Act for the Administration of Criminal Justice in the East-Indies* ([54]) without Partiality, Favor, or Affection; and if any Doubt shall arise, which is not explained by the said Articles of War or Act, according to my Conscience, the best of my Understanding, and the Custom of War in the like Cases: I do further swear that I will not divulge the *Finding, Opinion* ([55]) or Sentence of the Proposed.

([51]) Section 36—9 Geo. 4. c. 74.

([52]) No longer the " United Company of Merchants trading to the East Indies."

([53]) To provide for the Cases of Additional Charges subsequent to the trial, which may be legally tried if due notice be given, and the Prisoner be prepared for his Defence, and the Addl. Charges relate to the same subject—But an Addl. Charge is sometimes exhibited by the Court for Contempt, and such does not fall within the matter " now before you."

([54]) In trials for Crimes of Murder, &c. under Section II. of the Mutiny Act 4 Geo. 4. c. 81—and 9 Geo. 4. c. 74.

([55]) " Finding, Opinion, or Sentence in Clause 16. A Member should not divulge the Court's opinion in any way—It should be equally sacred as that of any Member.

Court until it shall be duly approved ([56]); *or a Copy thereof or the Publication thereof be "authorized by this Act."* Neither will I at any time, disclose *my own* ([57]) nor the vote or opinion of *the President* ([58]) nor of any Member of this Court, unless required to give Evidence thereof, as a Witness by a Court of Justice, or a Court Martial, in a due Course of Law *(see note* 63)—So help me God.

3—This Oath should be for General and other Courts Martial as in the 90th Annl. Article of War. Section XXVIII. and Section XIV. Art. XVI., do not require Secrecy as to the Sentence, or Votes, or Opinions of Members at Regtl. Courts-Martial—The use of one Oath will supply the omission and render Section XXVIII. unnecessary.

4.—Sentence of Death.—2-3rds are required to concur therein; but it should specify that "No "Judgment of Death shall pass without the Concur- "rence of Two thirds at the least of the Officers "present, *as to the Finding* as well as Sentence" ([59]).

([56]) Here the word "*Approved*"—as in Annl. Article of War 90 instead of the words "Approved and Confirmed." The Comr. in Chief's Warrant to Genl. Officers uses the Word "to be sent for my "*Approval.*" And so does the *Oath* taken by the Court. I cannot see why any one can insist on the use of the word "Confirmed."—A Copy of the Proceedings is allowed by Clause 17 and Section XXXI. of the Mutiny Acts; so that the divulging the Sentence should then cease to be an obligation.

([57]) The Grand Juror's Oath—It is so in the Declaration on Honor in the Annl. Article of War, 88—Now, really, if a Declaration on *Honor* to ascertain the claim of a wounded Officer, to a Pension requires the above words, surely the *Oath* on the trial of a man for his Life, perhaps, should be equally guarded—If a Member were to divulge his own vote, and all acted on this principle, it is clear that the Sentence of the Court might become known. In the Case of an Officer tried about a year ago the *Prosecutor* had been Cashiered—*his* trial had not been published, and he was objected to as an improper person to be Prosecutor—and the Officer under trial wished, thus, to call on Members to declare their vote as individual Members—The Court over-ruled such a Procedure.

([58]) The President's name should be included, as in the Grand Juror's Oath.

([59]) If a Court consist of 15 Officers 10 must concur in the *Finding* as well as Sentence—If in a Case of Murder, the Sentence, on Conviction, is Death—In the Case of Gunner Jno. Mulcahy, of Artillery, G. O. C. C., 23d August 1833—8 out of 15 found him Guilty of Murder—and 7 of Manslaughter—I recorded this fact on the Proceedings, declaring that 10 were required to find him Guilty of Murder. I fear Courts may, from Misunderstanding these Cases,

The Annl. Article of War 71, should have the above Words inserted in it—and for the reasons assigned in Note 59—there should be added a Clause to this Effect —" *Provided that in all Cases, that the Members who shall have acquitted, shall concur with the Majority in such Sentence.*" Proposed.

5.—As Jurors do agree in their Finding (otherwise they are locked up, and discharged, finally, if they cannot agree in their Verdict)—Military Jurors should, on a As to Sentence, by those acquitting.

have committed fatal Mistakes. In the Case of Mutiny or Desertion, if 8 out of 15 found the Prisoner Guilty, the Court could not pass Sentence of Death; but might that of Transportation. The Finding by a bare *Majority* is only laid down for Regtl. Cts. Ml. (Annl. Art. 79—and Company's Sect. XIV. Art. X.)—The term "*Majority*" should be used as applying to all Courts; except in Sentences of Death. The *Custom* of War induces Courts to act upon a Majority of Votes—We cannot treat the Finding in Cases of Murder differently from those of Mutiny and Desertion, and if a *bare Majority* find him Guilty; the Sentence must be less than *Death*. If the Finding in the one, must affect the Sentence—so it must in the other Case—We cannot argue that the *Minority* of 7 will refrain from passing a Sentence of Death, because they have acquitted the Prisoner—I have known an Acquitting Member in a Case of Mutiny, Sentence the Prisoner to 7 years Transportation, because he, as a Military Man, considered Discipline, to require such a Sentence—and on the now universally acknowledged principle, the Prisoner being legally found Guilty, every Member must Vote as to Punishment.

Capt. Simmons, p. 242, (1835) states that "Mr. Tytler and Captain Hough are of opinion, that those Members who have voted for an Acquittal are to vote on the question of Punishment, *in order to render it as mild as possible*"—Tytler, p. 318; Hough, p. 958 (1825).

Captain Hough's words are "*All* Members must vote some Punishment, if only *one* lash, for as a *Majority* find the Prisoner Guilty, the act of the Majority decides as to *some* Punishment, and the Minority *can*, by their Award, *decrease* the quantum—were they left out they would *increase* it."

Now, Capt. Simmons ought to know, that many Officers, from conscientious notions (tho' erroneous) maintain that they should not be compelled to vote—I conducted a trial in which a Member did refuse to vote *any* Punishment—I told him it was the Custom of War to vote—he said his conscience would not allow him—that if an Act of Parliament compelled him; he must obey the Law—We adjourned the Court for several days, and my opinion was supported by the Comr. in Chief (Lr. J. A. G. No. 256, 8th Sept. 1832—so decided in several instances of reference). Sir C. Morgan (Tytler, p. 250 and 364,) declared that "the Prisoner ought to have the presumptive opinion of those Members who have absolved him, *thrown into the Scale* with the Votes to those who incline to the *lesser Punishment*"—See more under the Head "*Votes.*" Capt. Hough never intended, nor does his Language imply such a notion; that an Officer was to vote a less Punishment than his sense of Duty required—The Effect of Conscience, in this Case, is a mistaken notion of Duty.

legal Conviction, vote as to the Punishment as a body, and they should be compelled, by Legislative Enactment, to throw aside their Characters as Jurors, and assume those of Judges ; to prevent delays and inconvenience at Courts-Martial. Suppose a young Member declares that he never heard of such a Practice ; that it is not laid down in the Mutiny Act or Articles of War; and that it would have been so declared if it were thought proper—the J. A. can only assert that it is the Custom of War, and that a Letter from the J. A. G. declares it to be so, and has been so ruled by many Comrs. in Chief—He will, perhaps, reply, "with all due deference to the Comr. in Chief, whose Commands are Laws in Military Matters ; he has no legal Authority ; there is no legal Enactment ; and my Conscience forbids me to vote."

6.—In the Case cited in Note 59, last para. :—the Member was an Officer of 22 Years' Service, and a very intelligent well-informed Man—He complained of there being no Law to require the acquitting Member to vote any Punishment—He was reasoned with for a long time and the other Members tried also, to convince him—that it was, as it is "the Custom of the Army." He was told that his not voting was an extra Punishment to the Prisoner, by longer Confinement ; and contrary to his intention of procuring a mild Punishment; since, instead of *decreasing* he was *increasing* it. On the receipt of the J. A. G.'s opinion, he acquiesced.

7.—I think I have clearly proved that I do not ask for a Legislative Enactment, in this Case, on slight grounds—Justice to the Service—to the Members of Courts-Martial—and to the Prisoner—equally call for it—and I should hope that the Opinion of one who has conducted many Trials from Murder down to the lowest Military Offence, may have some Weight !—it is not my individual opinion ; but that of all Officers who have had experience : and, surely, J. Advocates and Members must best know the necessity for the Measure proposed.

8.—If the Question arise, the closed Court has to decide the point—one or two hours of valuable time has been, and may be again, taken up to convince the

Member who declines; and I recollect seeing in the records of the D. J. A. G's. Office at Meerut, a Case wherein a Genl. Court-Martial adjourned till an answer could be received from Calcutta nearly 800 miles distant!—The Comr. in Chief (Marq. Hastings) desired the Adjt. Genl. to H. M.'s Forces in India, to write a Letter, explaining that it was the "Custom of War for the Acquitting Member to vote as to Punishment," and "the bounden duty of every Officer; as it was in his Capacity, as *Judge* and not as *Juror*."—The Letter added that "if the Officer still continued to decline to vote—Charges would be exhibited against him!"

9.—The former Case was that of a Company's—the latter of a King's—Officer—so that Officers in both Services, do, at times misunderstand this "Custom of War." Had the latter Officer been brought to trial, the Public Service would have been put to inconvenience merely owing to the want of Legislative Enactment. I do not quote Chapter and Verse, because I desire to effect a public good; but not at the expense of private feelings: but as a J. A. of considerable experience—with the knowledge, personally, of the first cited Case—I should neglect my duty, if I abstained from soliciting attention to the Mode in which I humbly think such Occurrences may be avoided.

10.—Under this Section is included the Times at which a Court-Martial may, legally, sit—which is in India, from the hours of 6 A. M. to 4 P. M.—except in Cases "requiring an immediate example"—I think the Hours for Sitting should, in India, be unlimited, and be left to the Discretion of Courts-Martial, which now may, legally, sit 10 *hours*, whereas, they never do more than 6 hours—and in the warm weather cannot sit longer—I have usually got the Sanction to sit at 6 A. M. as, to assemble at 11 A. M. and drag European Witnesses, or any Witnesses, to a Court through a hot, burning, sun, is injurious to men whose Health ought to be a first consideration—The Courts can thus adjourn at an early hour. Hours of Sitting.

11.—At present a Court may require to sit an hour beyond the legal Time of 4 P. M.—but must adjourn,

and meet another day—Members have to come from a great distance—perhaps—Witnesses also—I would, therefore, recommend this Clause—That "*All Courts-Martial shall assemble at such hours as the Authority directing the holding of the Court shall appoint, and shall adjourn at such hour as the Court shall appoint, and may re-assemble on such day, and at such hour as the Court may appoint; Provided that, if the Court shall adjourn sine die, for a new Trial, the Court shall be re-assembled by order of the convening or other Superior Authority.*

Proposed. Hours of Sitting unlimited.

12.—Officers may be kept from other Duties under the restriction as to Time—and surely any measure which shall render Officers available for other important Duties is a great object gained—Nor, must we lose sight of the fact that, on Service, the detention of Officers on Court-Martial duty is often inconvenient when even there may exist no Cause for "an immediate Example"—The assembling another day may be inconvenient then, and even so may it be in Cantonments, in hot weather, when sickness prevails.

Witnesses free from Arrest.

13.—This Section also contains a provision as to the Privilege of Freedom from Arrest in going to, and coming from, Court, of Persons duly summoned as Witnesses, by the Judge Advocate, at Genl. Cts. Martial, or Person officiating as such—Section XX. extends the Privilege to Detachment Courts-Martial, composed of 3 Officers (having the same Powers as Genl. Cts.-Martial,) and so does Clause 12, Annl. M. A. 1835, and Clause 15 to General and District Courts.

14.—There is a very material Omission as to Witnesses for Regimental Courts-Martial, (both King's and Company's) who, in Justice, should have the same Privilege as to Exemption from Arrest in going to, and coming from, the Court. (60) The wording of Clause 15, and of Section XXVII. Company's Mutiny Act should be as follows.

Proposed.

15.—"Provided also, that all Witnesses duly summoned by the Judge Advocate, or Person officiating

(60) The Advte. Genl. (Mr Pearson) is of opinion, I am informed, and, as must be the case, that Witnesses going before *Regimental* Courts-Martial, are not exempt; because the Provision only extends to the Courts specifically named in the Mutiny Act.

as such, or by the President of a District or Garrison *or any other Court-Martial, or Military Court or Board* (61) shall, &c.—The Words in Italics explain the proposed very concise addition. As to Regtl. &c. Courts.

Oath to be taken by Judge Advocates at General Courts-Martial.

This (XXVII.) Section contains the Oath to be taken by Judge Advocates at General Courts-Martial. Oath of J. A.

" I ——— do swear, that I will not, (62) at any time whatsoever, discover the Vote or Opinion of *the President nor of* any Member of this Court-Martial, unless required to give Evidence thereof as a Witness by a Court of Justice or Court-Martial, in due Course of Law. (63) So help me God."

Oath to an Interpreter, required in the East Indies, at all Courts-Martial; where there are Native Witnesses. Not provided for in H. M.'s Mutiny Act.

To be administered to the Interpreter, if at a General-Court-Martial by the Judge Advocate, or Person officiating as such. If at other Courts by the President. Interpreter's Oath.

I—A. B.—swear, that I will faithfully interpret and translate in all Cases in which I shall be called

(61) To include Courts of Inquiry—Courts of Inquests—Courts of Requests—and Military Boards.

(62) Omitting—" upon any Account" not required—also " disclose or."

(63) Now in the Case cited in Note 57 had the J. A. been called on to divulge the vote of any *particular* Member, and if so he might have divulged the votes of the whole Court, he would have told the Prosecutor and the Court, that he could not, legally, do so—for if a Member could not divulge his *own* vote—for could he, *all* might, and thus divulge the Sentence; and gain the very information which the Legislature, for wise purposes, design to conceal—such would be not in a due course of Law."

on to do so, in the Cause of the present Trial (64); and should my Presence be required at the passing of the *Finding and* Sentence, that I will not discover it to any Person, until it shall have been approved or published by competent Authority."

"Neither will I, at any time, discover the Vote or Opinion of *the President or* any Member; unless required to give Evidence thereof, as a Witness, by a Court of Justice, or a Court-Martial, in due Course of Law. (65) So help me God."

Persons tried may have a Copy of Sentence and Proceedings.

Sec. XXXI. 4 Geo. 4, c. 81.

1.—Under this Section as under Clause 17, Annl. M. A. a Person tried by a General Court-Martial is entitled to a Copy of the Sentence and Proceedings, upon Demand made by himself, or by any Person in his behalf, paying reasonably for the same, (66) "at any Time not sooner than 6 Months after such Sentences" —"*have been passed*;" (67) if *within* the Provinces; and not sooner than 12 Months if beyond the Seas, &c. —"whether any such Sentence be approved or not;" &c. (68)

(64) Should there be no regular Interpreter, (tho' one is appointed to each King's and Company's Regt. in India) any other Officer may act, taking the Oath. And in Cases of Emergency, any Member sworn as such, may interpret.—State Trials, vol. 14, p. 580.

(65) Regarding which see conclusion to Note 63.

(66) The Expense of copying them out is the Charge.

(67) Should have been added—Clause 17—allows of a copy in 3 months if in Europe—in 6, and 12 months, out of Europe—I think a copy should be granted on demand, as soon as published; or if not published within 3 months in India. I believe a copy is seldom or never refused if at once applied for. But why should not the Prosecutor be entitled to a copy; and indeed any whose conduct, or character may be called in Question—If not of Right, still in certain Cases.

(68) Should rather be "*published* or not"—Many years ago an Officer was tried, and acquitted. He had been the *Amicus Curiæ* of his brother Officer—his Commanding Officer caused his trial as he thought his conduct unofficerlike—he was acquitted, the Sentence was not published, but he was told there was no further occasion for his Services. He applied to the Army Agent, London, and was reinstated—the Officer, now in the Army, told me so himself. Without any

2.—Clause 17 adds, " Provided that such Demand as aforesaid shall have been made within (69) Three Years from the Date of the Approval, (70) or other final Decision upon the Proceedings of (71) such General Court-Martial.

3.—It will be observable, that a Copy of a District, or Garrison, or Regtl. Court-Martial is not demandable by the Prisoner, or by any Person on his behalf—So that, if any Case arises to give a reasonable necessity for such a Copy, it would be applied for, and if granted, be made a Special Case. (72)

No N. C. O. or (73) Soldier liable to Arrest for Debt under 200 Sicca (74) Rupees—Remedy if illegally Arrested.

1.—When the Act was framed, the Amount was the same (£20) in the Annl. M. A.; but, now, by Clause 3. M. A. 1835, the Sum is raised to £30. Section LV. 4 Geo. 4, c. 81.

other intention than to prevent disgusting Cases being published in G. O.—Some Cases of General and District Courts-Martial have, in India, not been published to the Troops—and are merely sent to *the* Regt. concerned.

(69) To omit " the space of."

(70) Those who argue that the Commander in Chief should not " *Approve*" but " Confirm;" may add this 17th Clause to the Member's, &c. Oath and the Warrant from H. E. C. C.—as all 3 use the word " *Approval*," &c. !

(71) " of" not " before."

(72) In the Case of the Dragoon, Somerville, there was a Petition presented, and as well known, a Special Court of Inquiry was held regarding the Sentence of the Regtl. Court Martial, by which he was tried (June 1832). This was the form used instead of an appeal from the Regtl. to a General Court Martial given by the 121st Annl. Art. of War. This was not a complaint against his *Captain*, but to investigate charges against his *Commanding Officer*, and was, thus, made a special case; the 120th Article provides for this case where an *Officer* is wronged. At the Half Yearly Inspections General Officers of Divisions, &c. are ordered to inquire if there are any Complaints and this is done on the Parade, and sometimes made verbally; or by Petition in writing. I think it might be as well to frame a Clause to the above effect to be added to Article 121. In Somerville's Case, see p. 141, (37) Hough's P. C. M. and other Military Courts (1834).

(73) Should be " N. C. or."

(74) Should be " Company's."

2.—It is singular that this Section should have allowed of Arrest for Debt for 200 Rs., when, almost immediately afterwards, another Section (LVII.) declares that, all Debts not exceeding 400 *Sa. Rs.* " are Cognizable before a *Court* of *Requests* composed of Military Officers, and not *elsewhere.* ([75])

3.—As to Debts contracted *before* the Soldier is inlisted ; and as to all Debts *above* 400 Sa. Rs.; it was necessary to provide for them—The Wording of the Section should have been as follows :—

Proposed. " And to prevent, as far as may be, any unjust or fraudulent Arrests that may be made upon Soldier's" *for Debts contracted prior to Inlistment*, &c. line 30, instead of the words, " amounts to the Value of 200 Sa. Rs. &c." there should be these words—" *If contracted before Inlistment,* amounts to the Value of 300 Rs." ([76]) and as to Debts contracted *subsequent* to Inlistment—if the Debt " amounts to *above* the Value of 400 Rs."

MILITARY COURTS OF REQUESTS.

JURISDICTION OF MILITARY COURTS OF REQUESTS—(WHERE TROOPS ARE SERVING BEYOND THE JURISDICTION OF THE CALCUTTA, &c. COURTS OF REQUESTS)—IN ACTIONS OF DEBTS—NOT EXCEEDING 400 SA. RS.

Section LVII. 4 Geo 4, c. 81. Extent of Jurisdiction.

1.—This Section requires much Amendment—it runs thus—" And be it further enacted, that in all Places where the said Company's Forces now are or may be employed, or where any Body of H. M.'s Forces may be serving with the Forces of the said

([75]) The Advocate General (Mr. Pearson) is of opinion that the LVII. Section may be pleaded in bar to an Action of Debt, for 400 Sa. Rs. in the Supreme Court. In the Case of Mackintosh, Stewart, and Bailie v. Moore and Cowel, *Supreme Court*, 12th January 1830, suing for 400 Rs., Sir C. Grey and Ryan said, " the case should have been brought in the Court of Requests, and in such cases gave no costs." It should have been referred to the Court of Requests !

([76]) As in Clause 3, Ann. M. A. 1835, as in India, King's and Company's Soldiers should be on the same footing.

Company, situate beyond the Jurisdictiton of the Courts of Requests established at the Cities of Calcutta, Madras and Bombay respectively—Actions of Debt, and all Personal ([77]) Actions against such Officers, N. C. O. or Soldiers, all Persons licensed to act as Suttlers to any Corps or Detachment, or at any Station or Cantonment, *not being within the Cities of Calcutta,* &c. ([78]),—or other Persons amenable to the Provisions of this Act, or resident ([79]) within the Limits of a Military Cantonment, *and all Persons of a Civil Capacity of any Rank or Quality, for Debts contracted while residing in such Cantonment,* &c.—shall be cognizable before a Court of Requests composed of Military Officers and not elsewhere ([75]); provided the value in question shall not exceed 400 Sa. Rs. ([80]) and that the Defendant was a Person of the above Description when the cause of Action arose, *and though such Debt may have been contracted, not in the Cantonment, &c. where resident at the time the Action is* Proposed.

([77]) Actions to recover Property, damaged or injured—but not as to *Criminal* Jurisdiction, nor to investigate cases of *Maltreatment,* " excepting when connected with a Servant's Desertion, and then " only, when he sues for his wages in this Court." (Circular Adjt. General No 528, 1st May, 1829). In such cases of *Maltreatment,* if *it* compelled the Servant to desert or run away it would not give the Master a ground to ask—nor the Court any right, under this Circular, to direct stoppages of half, or a whole month's Pay.

([78]) To define, that the Stations of Barrackpore, Dum-Dum, and Bally Gunge (Body Guard Lines) are not within the Jurisdiction of the Calcutta Court—The LVII. Section only declares " situate *beyond* the Jurisdiction of the Courts of Requests at the City of Calcutta."

([79]) The words " and all persons in a Civil Capacity, &c." should be introduced; for if a Civil Servant of Government—or any private person, comes to reside in, or pass thro' a Military Cantonment, or Camp—the Debts therein contracted, are Debts which ought to be decided by Military Courts—and as some doubt their amenability and as it is an equitable Provision, it should form a Clause to prevent Disputes, Reference, &c. If an Officer were to incur Debts at a Civil Station, he would under Act XI. of 1836, be amenable to the Civil Power.

([80]) I would recommend the sum in the Cases of Officers, to be extended to Sums above 400 Rs. to recover the amount due for a House, Bungalow, Quarters, Tent, Elephants, Horses, &c. and it might be extended to the Sum of 5000 Rs. with a F. O. as President, and the Proceedings conducted by a J. A. as laid down under G. O. V. P. C. No. 175 of 1832, 29th October. See P. C. M. and other Mily. Courts. p. 184 (27) for why should such a Case as " *William Hopper* v. *Clements Brown*" be liable, as that was, to be decided in

commenced (81);—which Court the Comg. Officer of any Station or Cantonment, *or the Officer Comg. a Detached Corps or Detachment*, is hereby authorized, (82) to convene, and the said Court shall in all practicable Cases consist of 5 Commissioned Officers, and in no Instance of less than 3, and the President thereof shall *in all practicable Cases* (83) *be a Field Officer*, and not under the Rank of a Captain, *or Officer having served* 8 *years as a Commissioned Officer* (84), and that

the Supreme Court; surely a question of a "*Notice to Quit*" should be decided by a Mily. Court, and in this Case there was another question as to *rent*. "The *Court*, leaving all questions of law undecided, non-suited the *Plff*., on the ground of *informality of notice* on 30th Jany.; and on 12th Nov. 1833, decided in *Plff's. favor.* Hough's P. C. M. and other Mily. Cts. (1834) p. 202.

In extending the amount of Debt cognizable to *above* 400 Rs. I should restrict it to the Cases of actual necessity, for if an Officer had many Houses, &c. a Stud, or the like, his brother Officers should not sit in judgment on such cases. My object is not to oblige an Officer to go to a Civil Court to recover the value of a Bungalow, Tent, Horses, which Officers of his rank must have. This is a Military and equitable Rule.

The Sales of the Effects of a deceased Officer, or in Case of an Officer going to Europe, may amount to more than 400 Rs.—sold to one Officer, &c.

An Officer once said to me—"I have sold my Bungalow for 2000 Rs. and ——— will not pay me—what can I do"—"Why," I replied, "you have the Civil Court—or you may sue in a Court of Requests—sinking 2000 Rs.—to 400 Sa. Rs.!—If there be any ungentlemanly Conduct, you may exhibit Charges—he may be punished by a Gl. Ct. Martial—by a reprimand, or something more—but, as to your Money only a Court taking cognizance of Debts, can relieve you!"

As to Money lent to assist an Officer in distress, or lent on fair interest, such Cases should be cognizable—In fact such transactions as are of a fair, honorable, nature, as Gentlemen and Men of "good Conscience"—should be called on to settle—as between two brother Officers. Such a Provision would tend to facilitate pecuniary transactions between Officers—but, no one deprecates more than I do a litigating spirit.

(81) If an Officer contract a Debt in Calcutta, he may be sued for such Debt at Loodianah the most distant Mily. Station. Shop bills from Calcutta. are often sent to Mily. Station, tho' the Debt was contracted in Calcutta (Lr. Adj. Genl. No. 752, 22d May, 1831)—and under the opinion of Mr. Advte. Genl. Pearson.

(82) "and empowered" omitted—only a repetition.

(83) The Order of the Comr. in Chief in 1830, better to be in the Act.

(84) So allowed as President of a Regtl. Ct. Ml. under Section XIV. Art. XVI. An Officer, in the Cemd. of a Detachment at Mynpooree in 1826, wrote me he did not know what course to take—"I am," he said, "the only Captain here—I cannot order the

in all practicable Cases every Member of such Court, shall have served not less than 5 years as a Commissioned Officer (85) and every *Officer* (86) assisting at such Court, before any *Decision shall be passed on any Claim* (87) shall take the following Oath upon the Holy Evangelists, *or such other Oath, and in such Form, according to the Forms of their respective Religions* (88). The rest as laid down.

2.—OATH. "I —— swear, that I will duly administer Justice, according to the Evidence, in the Matter, *or Matters* (89) that shall be brought before me. Oath taken by Court.

So help me God."

3.—WITNESSES.—"And every Witness before such Court shall be examined on Oath *according to the Form of his or her respective Religion,* (90) which Courts are hereby authorized to administer; or, if Natives of the East Indies, *(their Parents not* Witnesses Sworn.

Court and approve of the Proceedings if I appoint myself President —and the order to hold the Court is positive"—I replied—"order the Court, and send the Proceedings to the Officer Comg. the Station from which you are detached." He did so—Hence a provision for Detachments is required—Legislative Enactments do not always meet minor Cases but some one must point out these defects.

(85) G. O. V. P. C. No. 175 of 1832, 29th Oct. This corresponds with the age of a Juror.

(86) Instead of "*Member*" "Officer" includes, thus "the President and Members."

(87) The words omitted, are "Proceedings to be had before it," the other words used are better, because Courts usually meet merely to register Cases and adjourn to issue Summonses.

(88) 9 Geo. 4, c. 74, Sect. 37.

(89) When the Act first came out there was a doubt as to whether the Court were to be sworn on each Case, or once for all Cases—one Authority said that if a List were given in—swearing once would do for such Cases—another Authority declared, that swearing once for all was enough—now, no List is given in, for it is an Open Court—At some Stations they, I believe, still make the Staff Officer register Cases—this is objectionable, for some Cases may be improperly omitted—by one individual; while a Court alone should determine—as to all Cases. What would be said, if, instead of going publicly before the Calcutta Commissioners—you were directed to apply to the Clerk of the Court!

The words "*or Matters*"—very concisely meets the Case. Some may say that the words "*in the Matters*" would be enough—but it will be recollected that under the Act to punish stealing *Horses*—a Conviction failed;—because the Prisoner stole *one* Horse!

(90) 9 Geo. 4, c. 74, Sect. 87, may be the Oath taken by Witnesses at Courts-Martial.—*See Index.*

being Europeans,) ([91]) on Oath or Solemn Declaration, *or Affirmation, in such Form as the Court shall think binding on his or her Conscience ;* ([92]) *and the Plaintiff, or Defendant, or both, may be examined as the Court may think fit.* ([93])

([91]) If half Castes—they should be treated as Europeans.
([92]) 9 Geo. 4. c. 74. Sect. 36 ; omitting as the words, the Case may require."
([93]) Questions have been raised as to whether a Plaintiff or Defendant can be a witness in his own Cause—In Courts of Equity (in Chancery, and in Courts of Requests) the practice is to examine both if necessary—In the Court of Chancery the Plaintiff makes his Affidavit, and in answer thereto, the Defendant makes another—and these without end sometimes—so I proposed to enact the legality. It has been said by one Officer—that Courts of Requests decide contrary to *Law*—there is a mistake in this—*Equity* is part and parcel of Law—or the Lord Chancellor would not hold the "great seal." Equity is said by Blackstone, and all sound Lawyers—to be intended to give relief to Cases wherein there is no Specific Law—but still the remedy sought must not be repugnant to the general principles of Law—which I shall briefly illustrate by one Case—the *Law* gives you the *Power* to make a Will. Suppose I make a Will under the belief that I am worth 10,000£ and leave an only Daughter—I direct 100£ a year to be used for her Education—It turns out that on my Death, my Property has become worth 100,000£. In the latter Case the Executors think 300 or 400£ should be spent—they go before the Chancellor, and he being satisfied as to the Testator's intention to provide for his Daughter's best Interests—grants the relief sought. Of course, a Declaratory Act would do the same ; but we must not legislate in so grave a Matter!

Another point which requires remark is this—A friend of mine said—"I was brought up before the Court of Requests by my Servant—the Servant was sworn, and I was sworn, and they decided against me, is not this illegal"?—I replied, "certainly not—as Cts. of Requests may swear one or both Pltff. and Deft."—"Well but," he added, "the Court believed his Oath and not mine—for it could not believe both." I replied "there you are mistaken—the Servant, I conclude, swore to your owing 6 months Wages—you denied the fact, and swore that to the *best of your belief* you only owed him *three* months"—the Court, perplexed at two contradictory oaths bethought themselves, and a shrewd Member said *Qn. by Court*—"Pray do you keep any Accounts ?"—*A.* "I do not" *Court*—"The Court have no doubt that you *believe* that you only owe your Servant *three* months Wages, but, without calling in question *your* veracity, we sit here as a "Court of Conscience," and must decide against you. We advise you, in future, to keep accounts, and pay your Servants in presence of your upper Servant—Had you done so, you might have had 2 witnesses to 1 against the Pltff." "Decree for Pltff."

Another Officer asked me, "Pray—cannot a man be tried for Perjury, for giving false Evidence before the Court of Requests." I replied "he may certainly, but legal Perjury is not simply *a false Swearing* ; it must be false Swearing *Material to the issue*—and in this Case, it was not"——of course such Courts can, themselves, notice a case of Perjury ; but cannot try it.

4.—DECREES.—And it shall be competent to such Courts upon finding any Debt or Damage (94) due, either to award Execution thereof generally, *in the Case of any Officer, in Cases which may admit of the same, without detriment to the Public Service* ; (95) *but not in the Case of N. C. O. or Soldiers* (96) ;—or to direct that the whole *(in certain Case,)* (97) or any part of such Debt or Damage shall be stopped, *by Monthly Instalment or Instalments, not exceeding one-third of the Pay and Allowances of Officers under the Rank of Field Offices, and of one-half, in the Case of Officers of, and above the Rank of, Field Officers* ; (98) *Provided, that in the Case of N. C. O. or Soldiers, regard be had to the claims upon their Pay in respect of Regtl. Debts or for the Messing, or Supply of Regtl. Necessaries* (99)—*and the Amount so stopped,* to be paid over to the Creditor, *or to any legally Constituted Agent.* (99*) *on his behalf* out of any Pay *or Allowances, Prize, Donation,* or *any* Public Money *which may have been received, or may be due* or accruing due to the Debtor, in the Current or any future

(94) The word "Damage" cannot apply to a "Debt" but to a transaction of another Description—Thus a House is rented in a Cantonment at 50 Rs.—A. Demurs to pay more than 45, in a particular month, because the Servant of B. (the owner) has destroyed Deft.'s Property to the value of 5 Rs. The transactions are separate ; here, A. pays the rent and sues B. for the "*Damages,*" which, B. refuses to pay. Had it been for *Repairs* which B. promised to make, but did not make, A.'s deduction would be a set-off against the Rent ! But in the former Case, the Rent is due, and the Property has no relation to the Rent ! This, and many other Cases which might be quoted, is no *Debt.*

(95) It should only be acted upon in Cases where the Officer may have superfluous Property.

(96) A Soldier has no superfluous Property ! and if people will trust them after a Proclamation under the 111th Article of War, they should only recover by payments out of any *(if any)* Balances which may be due to the Soldier.

(97) Where an Officer has the means, and has deferred the payment improperly, then a Court should, in such an extreme Case, award as above directed—He may have "Prize Money"—or a "Donation" (as in the Burmese War) at his Command.

(98) As the Insolvent Court does—and this on a Reference to Govt.

(99) It would be still better to have a Regtl. Court in Corps for such Cases ; as the Officers could better check their Men's Debts.

(99*) Merchants, in Calcutta, &c. should send to some Merchant or Agent at the Station, and not trouble the Station Staff Officer : who is to pay the Postage ?—Letters are not sent bearing Postage.

Month *or Months*:—*by order of the Comg. Officer of the Station*; ([100]) and, in Case Execution shall be awarded generally, the Debt, if not paid forthwith, shall be levied by Seizure and public Sale of such of the Debtor's goods *as shall not render such Officer inefficient as such*, ([101]) as may be found within *or without* ([102]) the Camp, Garrison, or Cantonment, *or in any Civil Station or in any other Place whereso-ever*, ([103]) under a written order of the Comg. Officer."

Execution generally.

Future Execution.

5.—FUTURE EXECUTION.—" And the goods of the Debtor, if found within *or without* ([103]) the Camp, Garrison, or Cantonment, *or in any other Place out of the Limits of the said Presidency* ([104]) to which the Debtor shall belong or *to which his Property may have been removed*—at any subsequent Time—shall be liable to be seized *(as above set forth)*, and sold in Satisfaction of any Remainder of such Debt or Damage;"—by order of the Comg. Officer, *or other Authority*.

Future Stoppages.

6.—FUTURE STOPPAGES.—" And if sufficient goods shall not be found within *or without* ([102]) the Limits of the Camp, Garrison, Cantonment, *or any other Place as aforesaid*—then any *Prize, Donation*, any Public Money, or Pay, *received by*, due, or accru-ing to the Debtor, not exceeding the Half *of his* Pay-

([100]) An Officer once doubted the simple meaning of the words "current in *any* future Month"—He said, here is a Selection—to stop, for instance in this *current* Month (September)—or in *the* future Month of December—but, not to stop in Sept., Oct., Novr., and December. It was Officially decided against him.

([101]) An Officer's Charger—Tent—Regtl. Clothes, or Mily. Equip-ment of any kind, not to be seized—unless he shall have *duplicates*, or any excess of those Articles, &c. which are required to fit him for his Duty—Articles of great value should not be seized for Debts of small value, as is too often the Case in Executions for non-payment of Rent, in England.

([102]) A Decree of Execution was given at Keitah—The Officer sent off his Horse to Cawnpore—to be sold—The Comg. Officer of the former, wrote to the Officer Comg. at the latter Station. The Offi-cer's horse was seized and sold—The Act I propose, should be to seize any where—An Officer once said "send your Property out of the Limits of Cantonment, and it cannot be seized"!

([103]) To meet Cases of Removal of Property. If at a Civil Station, copy of Decree to be sent to the Civil Officer.

([104]) Section XLI. supposes a change of a Residence, I, suppose a change of Place as to property; to meet an extreme Case!

proper [105] shall be stopped, *by Monthly Instalment or Instalments* in Liquidation of such Debt or Damage. *Provided as aforesaid, in certain Cases where the Debtor has private funds the Court may direct Stoppages to be made as to both Pay and Allowances," or from any Public Money, &c.*

7.—If not in Receipt of Public Pay.—" And if such Debtor shall not receive Pay, as an Officer, or Soldier, or from any public Department, but be a Suttler, Servant, or Follower, he shall be arrested by like order of the Comg. Officer, and be imprisoned in some convenient Place within or without the Military Boundaries, for the space of Two Months,[106] unless the Debt be sooner paid. *Provided, that it shall be lawful for the Court instead of awarding Execution generally, to direct Payment of such Debt or Damage by Instalment or Instalments, taking good and sufficient Security for their Payment.*" [107]

Not in receipt of Public Pay.

Proposed.

Punishment for False Swearing.

There shall be added to this Section—a Provision for the Case of " Subornation of Perjury ;" if the one be triable, the necessity for the other is equal—sometimes, more so ; as more, I believe, suborn Evidence than perjure themselves.

Sec. LXIV. 4 Geo. 4, C. 81.

RULES AND ARTICLES OF WAR,

For the Govt. of Officers and Soldiers in the Service of the East India Company.

Divine Worship.

1.—This, Section directs the Officer " to be brought *before* a Court-Martial, there to be publicly and severely reprimanded by the President.

Sec. I. Art. I. Divine Worship.

[105] A Term used by the " Pay Regns." Having sold his Property, or having no Property to be sold, his allowances should not be touched.

[106] By the Calcutta Court Rules (24th October 1819) exceeding 200 Rs. Imprisonment is to the extent of one year.

[107] And in Cases of Insolvency, under G. O. G. G. in C. No. 173 of 1828, 8th August, as to Natives out of the Company's Provinces. And why ruin a poor *European*, by the Sale of his Property, not leaving him what even the Insolvent Court does to *Natives!*

2.—The 2d Annl. Article of War directs the Officer to "attend Divine Service *and Sermon*," and, for the omission to be publicly and severely reprimanded on Conviction thereof by *a* Genl. Ct. Martial—The Company's Article should be in conformity to the King's—"*on Conviction*, to be publicly and severely reprimanded"—not by the President of the Court—it may be, as would be most proper, in presence of his brother Officers—the Court having convicted the Officer, know that a reprimand is to follow.

MUTINY.

THE PENALTY OF SPEAKING TRAITOROUS, OR DISRESPECTFUL WORDS AGAINST THE KING, OR ANY OF THE ROYAL FAMILY; AND CONTEMPTUOUS WORDS AGAINST THE COMR. IN CHIEF.

Sec. II. Art. I. Disrespect to King or Comr. in Chief. 1.—Punishes Officers, N. C. O. and Soldiers who use traitorous or disrespectful Words against the King, or any of the Royal Family.

Art. 2. 2.—Punishes Contempt or Disrespect towards the Comr. in Chief.

Omitted. 3.—There is no Article punishing Contempt or Disrespect towards the Govr. Genl.; Governors; Government; the Court of Directors; or the Board of Control.

PENALTY OF MUTINY—NOT SUPPRESSING, OR CONCEALING, MUTINY—OF STRIKING, OR DRAWING ANY WEAPON AGAINST A SUPERIOR OFFICER, OR DISOBEYING LAWFUL ORDERS.

Arts. 3, 4, 5. Mutiny. 1.—In these 3 Articles, the Punishment is "shall suffer Death, or such other Punishment as by a General Court Martial shall be awarded." Under the 6th Annual Article of War, the Punishment in the Case of Soldiers, is, "shall suffer DEATH or TRANSPORTATION, or such other Punishment, &c."

2.—The Punishment of "TRANSPORTATION," (1) has been introduced into the Annl. Articles of War since the Company's Articles of War were framed (1823)—it should be now included in the Company's Code. For, though it may be said that many Soldiers desire such a punishment—in ignorance of the Degradation, and as well as of the sufferings of those condemned to it—still it should be retained in our Military Code—for, in India, we have not the same means of employing Soldiers in breaking stones, or of employing the Men on Public Works as in England. If, therefore, the Punishment is a proper one it should be legislatively provided for. (2) **Proposed.**

RETURNS.

This is a very singular Phraseology as remarked by *Capt. Simmons* (3) both in this Article, and in Article 43—"Any Officer who shall knowingly make a *false* Return to, &c. or to any his Superior Officer, authorized to call for *such* Return"—(4) the Words should be—"Any Officer who shall knowingly make a false Return, &c. or to any his Superior Officer, authorized to call for *a* Return or Returns.

Section V. Article 1. Returns.

Proposed.

(1) The 1st Section 4 Geo. 4. c. 81—and 1st Clause M. A. 1835—regarding Mutiny (among other Crimes declares the Punishment to be "Death or such other Punishment."—The King's Article 6—allows of a Sentence of Death, or Transportation—and it is singular that Clause 1—did not make this Provision—for it is most clear that though such Punishment of "Transportation" may be awarded under Clause 7 it should have been inserted in Clause 1, for the words—"Death or such other Punishment" are vague—and in the Case of Company's Soldiers inoperative—for Section VII. 4 Geo. 4, c. 81, only admits of "Transportation" in the Case of "Desertion." It should be in all Cases where the Sentence may be—"Death or such other Punishment"—and, in H. M.'s Code the Articles of War do provide for such a Sentence—but, now (*Company's*) the only Expedient would be,—to pass a Sentence of Death, and recommend that of "Transportation"—to which, under Sect. VIII.—the Comr. in Chief can commute.

(2) During Peace we should be able to get better men.

(3) p. 258 (1)

(4) As if an Officer were authorized to call for a *false* Return—The words proposed are better—substituting the Article *a* for the word "*such*," as Capt. Simmons recommends.

DESERTION.

Section VI. Arts. 1 and 4. Desertion.

1.—In the Case of Desertion Article IV. declares, L. 18, "or if any such N. C. O. or Soldier shall be claimed by the Corps in which he first ([5]) inlisted, and be proceeded against as a Deserter therefrom, his subsequent Desertion from one or more Corps in which he shall unwarrantably have inlisted may, (unless he shall have been tried for the same) be given in Evidence as an *Aggravation* of his Crime, previous notice being always given to such N. C. O. or Soldier of the Fact or Facts intended to be produced in Evidence against him.

2.—It will be seen that the wording of the Article should be as follows as in the 84th Annl. Art. of War :—

Proposed.

"And if such person shall be claimed as a Deserter by the Corps to which he originally belonged, and be tried as a Deserter therefrom, or shall be tried as a Deserter from any other Corps into which he may have inlisted, or if he shall be tried while actually serving in some Corps for Desertion from any other Corps, every Desertion previous or subsequent to that for which he shall be under trial—as well as every previous Conviction for any other Offence may be given in Evidence against him, *and being so given in Evidence shall be received as such by the Court.*" (See previous Convictions.) ([6])

([5]) If he deserted from 5 and inlisted into a 6th Corps, and if claimed by the Corps into which he first inlisted, his subsequent inlistment into the Corps 2 to 6 may be given in as Evidence against him—but, if claimed by Corps 2 to 5 into which he inlists they have not the same Privilege.

([6]) As *Simmons* states, p. 59 ([1]) "In Criminal Courts, under 7 and 8 Geo. 4, c. 28, the Indictment in its first Count, recites the previous Conviction and subsequent Felony ;—in the second Count, the subsequent Felony is stated as though there had been no previous Conviction. When the Prisoner is arraigned, the Clerk of the Arraigns states to him, that he stands indicted after a previous Conviction, of Felony for the present charge, and, in a condensed form recites the *second* Count. If the Prisoner pleads not guilty, the Evidence in support of *recent* Felony is gone through, the Certificate of the previous Conviction by the Officer of the Court, where the Conviction took place, is put in and read by the Clerk of the Arraigns, and a Witness is produced to prove the Identity of the Prisoner as the person mentioned in the Certificate : this Witness is generally the Jailer. This is the Practice approved by all the Judges except Mr. Just. Park, who prefers charging the Jury previous to the production of the Certificate."

3.—In Article IV. Section VI.—they are given in *Aggravation*, and used as Evidence before the Finding of Guilty. In the 84th Article of War, suppose a man inlisted in Corps nos. 1 to 6—If the trial be held in Corps no. 6—and the Prisoner had been tried in Corps 1 to 5—the *previous* Convictions can be given in Evidence—If tried by Corps no. 1—and also before tried for Desertions from Corps 2 to 6—they would be *subsequent Convictions* ([6])—they were formerly so tried in the King's Army. ([7])

4.—A change in Clause 21 of the M. A., (1834) was made from the words "in Evidence as an *Aggravation* of the Crime," to "in Evidence against him" but "*after*"—the former was, "*before* Conviction." ([8])

5.—Under Article IV. the first of Corps from 1 to 6, can give in Evidence *subsequent* Desertions, but not, it seems, Corps 2 to 5—The words in line 19 "shall Proposed.

There seems no reason why such a Practice should not obtain in the Army—for the Evidence as to the Charge of the *recent* fact cannot depend upon *previous* Convictions which are upon proofs quite distinct. For though, as stated by Phillipps, (Law of Evidence) Vol. I. p. 170—"It would not be allowed to show, on the trial of an Indictment, that the Prisoner has a *general* Disposition to commit the *same* kind of offence, as that *charged* against him"—such could never operate on the minds of a Court where the Crime was *Mutiny*, and the previous Convictions were for *Desertion!* or, where the previous Convictions are for Crimes of another description from that of the offence under trial—suppose the Crime tried be *Desertion*—and the previous Convictions are for the *same* offence—the Crime under investigation if provable by Evidence, say, of absence without leave for a period exceeding 21 days, which under Article 81—"shall be tried for *Desertion* by a Genl. or District or Garrison Ct. Ml."—or, where, by going on board of ship—inlisting into another Regt., or by any other act, shall evince an intention of *not* returning—I cannot therefore imagine in what possible manner, under any of the above circumstances, any man's mind could be influenced by a knowledge of previous Convictions.

The case stated, above, by Phillipps—goes to this—if A. be tried for "*Murder*," you are not to give, in Evidence, proof of former "*Murderous*" Deeds. But, in trials for *Civil Crimes* Courts-Martial do not receive previous Convictions—and Military Crimes are usually of easy proof.

([7]) In the Case of Private Robt. Laffin, H. M.'s 34th Regt., he was tried for "deserting from his Regt., &c.—this being the *third time* of his Desertion"—G. O. C. C. (Bengal) 19th April, 1820—Case 43—Hough's Case Book, (1825) p. 147—and Case 46—Gunner Jno. Murphy, 2, T. H. B. "for Desertion, &c., having before repeatedly deserted *or absented himself without leave*"—(G. O. C. C. 11th May, 1819.) p. 159, *do.*

([8]) Clause 21—corresponds with Article 84.

be claimed by the Corps in which he *first* inlisted"—should have been "into which he *before* inlisted," and would allow, distinctly, of Corps from 2 to 5 to act in the same manner as the. Corps into which he *first* inlisted—(See *previous* Convictions—*Index.*)

entence. 6.—The Punishment under Section VI. Article I.—is DEATH, "or such other Punishment."—Transportation is allowed under Section VII. 4th Geo. 4, c. 81 in this Case—but Article I. Section VI. should so declare itand in all Cases in which the Court "shall not think the Offence (in *all* Cases under Trial) deserving of a Capital Punishment," as in Clause 7 Anul. M. A. 1835.

7.—By Section IX. may be sentenced to "General Service" ([9])—and by Section X. those inlisted for a limited time, may be Sentenced to serve for an addl. Period, or for Life ([10]); and may be adjudged to forfeit "all Benefit or Advantage as to Increase of Pay, or as to Pension on Discharge, which might otherwise have accrued to such N. C. O. or Soldier from the length or nature of his Service—in addition to any other Punishment"—Clause 11 makes the same Forfeiture([11])—Under Article 38 forfeiture of Pay for the Days he is absent.

Marking (D.) 8.—The Marking a Deserter (D.) under Section XI. and Clause 11, Mutiny Acts—declare that it shall be "*lawful*;" but as before said, (*See Index*) a circular order such marking; the words should be instead of "it shall be lawful to direct"—these words "*General*

([9]) Which I have never known to be used.

([10]) The latter are good Punishments.

([11]) This Forfeiture is *limited* "as to Increase of Pay, or as to Pension on Discharge, which might otherwise have accrued, &c. from Length of Service." The 82nd Article of War (and Article 38) declares that every Soldier "on Conviction of Desertion *thereupon* forfeits, &c."—So that (as declared in the Monthly Returns of Corps,) it is not required to insert the Forfeiture in the Sentence in the Case of a King's Soldier—indeed, it takes it out of the Power of the Court to exercise a discretion as to any such Award—The whole or any part of such Forfeiture (but not such Addl. Pay as may have been stopped) may be restored, in the event of subsequent good, faithful, or gallant Service in our Army.

If the Soldier serves the Time which shall entitle him to Pension—he will obtain it—or an increase of Pay—*unlimited* Forfeiture is only in the Case of Disgraceful Conduct—see *Disgraceful* Conduct, Article 77.

and District Courts-Martial shall in all Cases direct the Prisoner to be marked with the Letter (D.), &c." Proposed.

Sending Challenges—Seconds.

1.—The Penalty of giving or sending Challenges, in the Case of an Officer sending to any other Officer ([12]), to fight a Duel, is, "upon Pain *(on Conviction)* ([13]) of being Cashiered." The 60th and 69th Articles (King's) only declare the Officer to be "*liable* to be Cashiered"—and so should it be as to a Company's Officer. Section VII. Art. ii.

2.—The Penalty of any Officer, &c. Comg. a Guard who "shall willingly and knowingly suffer *any Person whatsoever* ([14]) to go forth to fight a Duel; and all Seconds, Promoters, and Carriers of Challenges, are also, on Pain of being Cashiered; under Articles (King's) 60 and 69 "liable to be Cashiered." Article 3. Seconds.

3.—The upbraiding another for refusing a Challenge is punishable as above directed. Article 5.

4.—The 60th (King's) Article of War includes, in a few words, the Commissions and Penalties laid down in Arts. II., III. and V. of Sec. VII. (Company's)—The remaining part of Section VII. is contained in the (King's) Article 105.

Redressing Wrongs of Officers.

1.—The Complaint is to be made to the Comr. in Chief. The (King's) Article 120 directs the Genl. Section X. Article I. Redressing Wrongs.

([12]) The object was to prevent Duelling in the Army—but, to send a Challenge to any one *not* in the *Army* is no Crime, under Section VII. Article II.—nor, under Article 60 (King's)—though such an offence may be tried under Section XIV. Art. XXVI.—or (King's) Article 31, if connected with "Behaviour, scandalous, infamous manner, unbecoming the Character of an Officer *and* a Gentleman"—(should rather be *or* a Gentleman.)—

([13]) As in Article 69—for a Challenge may be sent—but there may be no proof of the fact!

([14]) Would imply any Civil as well as *Mily.* person—the object being to preserve the Peace.

Comg. in Chief our Forces ([15]) to examine into the Complaint, and either by himself, or by our Secretary of War, to make his Report to us thereupon, in order to receive our further Directions.

2.—The Company's Article does not authorize by Enactment, an Appeal to the Govr. Genl., or Govr. in Council ([16])—or to the Home Authorities ([17])—The King's and Company's Officers should be on an equality in this respect.

Penalty if a Soldier sell, lose, or spoil his Arms.

Section XI. Article 3. Every N. C. O. or Soldier who shall be convicted at a Genl. or Regtl. Court-Martial of having sold, lost, designedly or through neglect spoiled his ([18]) Horse, Arms, Clothes, Accoutrements, or Regtl. Necessaries, shall undergo such Weekly ([19]) Stoppages (not exceeding the Half ([20]) of his Pay and Allowances) as such

([15]) Should be added "or Genl. Comg. our Forces in the E. Indies or in our Colonies, &c."

([16]) Though Lieut. Goad, 1st Cavy., did appeal to the G. G. in C. in 1832.

([17]) Section XIV. Art. XVIII. Articles of War, allows the Court of Directors to dismiss Officers without Trial—Section 75 of the Charter (Act 3 and 4 c. 85) recites the same, but includes *Civil*, &c. Servants—Section 74 gives the King the like Power—now, if such a Power is to be exercised by the Crown, Officers *Civil and Military* should, legally, have the Power to appeal—I merely throw out this, respectfully, to the Superior Authorities.

Proposed. ([18]) If a Sentry loses Arms, &c. under his Charge as Sentry, it has been declared (Lr. Adj. Genl.) proper to put him under Stoppages as laid down (G. O. G. G. in C. 7th May, 1819)—should be in the Article, thus:—"his Horse, Arms, &c. *or any which may be placed under his Charge.*"

([19]) Should be "*monthly*"—the Troops are so paid in India—Article 79 (King's) direct "*daily*"—H. M.'s Troops in India were, *formerly*, paid daily, which was not only troublesome,—but as no man had any inducement to save the mite he received, he spent his daily balance in drink. The Practice has been, from the latter Cause, discontinued. There is now, by the *Monthly* Balance an opportunity of saving a little to put by—and if a man be resolved to drink, it is better to have a *Carouse* for a day or two after Pay-Day—than daily Drunkenness.

Under this Section, and Article (King's) 79—the term should be "*Monthly Stoppages.*"

([20]) Under Article (King's) 79—two-thirds of his Pay.

Court-Martial shall judge ([21]) sufficient for repairing the loss or damage; and shall, besides, suffer Imprisonment, or other Corporal Punishment, at the Discretion of the said Court-Martial.

Administration of Justice.

The Constitution of Genl. Courts-Martial. See Section XIV. Article 1.

Rules to be observed in the Punishment of Officers—Suspension from Rank, Pay, and Allowances—Loss of Rank.

1.—The first part of this Article allows of Suspension from Rank ([22]), Pay, and Allowances ([23]); such was, formerly, used in H. M.'s Army, but it was found Section XIV. Article 8.

([21]) The Court only "*judge*" as to the portion of Pay, &c. to be stopped weekly or daily; the G. O. G. G. in C. 7th May, 1819, lays down the Rates payable to replace the lost article—the Captain, &c. of Troops, &c. makes a note in his Pay Abstract—A. placed by Sentence of a Court-Martial under Stoppages to replace a Musket lost—not exceeding 2 Rs. a month;" the above G. O. declares the value—say 18 Rs. and the Pay Master deducts 2 Rs. for 9 months.

([22]) The suspension in question has occasioned much controversy—the words should have been "suspended from Rank and Pay and Allowances," (for a stated period "*during which suspension, such suspended Officer shall not be promoted to any superior grade; that is, a Lieutenant shall not, during such suspension, be promoted to Captain.*" Proposed.

It has been stated—that if an Officer were suspended as 3rd Lieut. he cannot become 1st Lieut. during such suspension—nor be removed to a new Regt. from 3d to 1st Lieut. Undoubtedly, during such suspension, he could not be *promoted* in his Corps, or be removed to a new Corps to be so promoted.

But, the assertors of the contrary Proposition, advance an argument which would entail endless adjustments of Rank. If the suspension is to be considered as a total Loss of *all* Rights in virtue of his Commission—and that the Officer—who is 3d Lieut. must revert to his position as 3rd Lieut., so that, after his suspension, a new Commission is required—then his punishment depends upon chance—good luck to his Regt. is a misfortune to him. Suspension from Pay naturally occasioned Suspension from Rank—as no Service can be given without Pay—and the King's Soldier reckons no Service for which he receives no Pay.

([23]) If a Court do not intend to Suspend from Rank, Pay, *and Allowances*, but only from Rank and Pay—they should express in their Sentence—"To be suspended from Rank and Pay *only*." (Lr. Secy. to Govt. Mily. Dept. No. 95, 7th Novr. 1833.)

to be an improper Sentence, as the State was deprived of the Officer's Service: and there is another view of the Question not before noticed.—Can that Officer, suspended for one year, reckon such Time in his Service for Pension for Length of Service?—I apprehend that, legally, he cannot. If my opinion be correct, it follows that the Sentence is a severe one. The Mulct of Pay, is an old Mily. Mode of Punishment, (24) and as used, at the present day, as preventing the Officer mulcted from doing any duty. In time of Peace it must be inconvenient, for as has been observed by the Duke of Wellington (25) "the good must do the duty of the bad"—thus, in fact, it is the Punishment of the good in the shape of extra duty, while the bad lose their Pay—and the Creditors, if the Officer be in debt (as most of such Officers are)—suffer—while the State gains the mere pecuniary Saving. If not in Debt, it is most likely to throw him into Debt. It must operate differently at Half Batta and Full Batta Stations. And differently in the case of married and single Officers! In time of War, the Officer's place cannot be supplied; and as was remarked by the Marq. of Hastings, it is then an improper Punishment.

I respectfully submit, that the Article VIII. Section XIV. does not admit of such a construction—I think the Article very severe—but, with all submission, and without desiring to unnecessarily call in question any Legal Provision—I cannot perceive that the words of the Article—"to be suspended from Rank and Pay and Allowances," can mean any thing but the actual deprivation of "Allowances" as well as "Pay"—the bountiful intention of Govt. every Officer must appreciate, and tho' it is a most delicate point to moot—I humbly think that,—proper, as no doubt the effect of the Construction of the Article is; still, it should be expressed by Legislative Enactment, for under the Charter (3 and 4 Wm. 4, Cap. 85, S. 43) no interference with H. M.'s, or the E. I. Company's M. A. or Articles of War (European) is allowed.

The permission thus accorded by the Govt. is in favor of mercy, and, therefore, is an Act of Grace. It is one, at the same time, which has the implied Sanction of the Court of Directors and the Home Authorities; for (it was granted by the Govt. of Bengal in 1833. (Lr. of Secy. to Govt. Mily. Dept., No. 95, 7th Nov.)—So that it must, as the Result of a Minute of Council, be known at Home. But I am not aware if it extends to Madras and Bombay. An Enactment to the same effect will be proper.

(24) See *Grose's* Mily. Antiquities, and the old Writers.

(25) Alluding to there being 100 out of 600 men in one Regt. of Foot Guards in Solitary confinement, "*billed.*"

2.—It is also clear that it is not an equal Punishment—to the poor Officer it may be ruinous—by the rich Officer it would not be felt. ([26]) I am aware that the Home Authorities are of opinion, that, in the Company's Army, with our *slow Promotion*, the placing an Officer one or more steps lower in his grade is objectionable—If therefore, Suspension from *Pay* is to be retained in the least objectionable form—the wording should be as follows—"The Court, in all such cases, to adjudge such Officer to be ([27]) *Mulcted of any sum of Money not exceeding* 12 *months Pay Proper, and the Court may order the Deductions from the Officer's Pay monthly in such proportions as the case may require, till the whole Amount shall be paid —Provided that no Officer shall be suspended from Rank or Duty* ([28])

Proposed.

No Suspension from R. and P.

3.—The 2nd part, "or to lose his *Rank*, or such portion of his *Rank* in the Army, or in his Regt., Battn. or Corps, according to the Date of his Commission, or Seniority, at the Discretion of the Court, by adjudging such Officer to be placed lower on the List of *the (Grade)* ([29]) which such Officer may hold in the Army, or in ([30]) the Regt., &c. *or in the Army and in his Regt.* ([31])

Loss of Rank, &c.

4.—There are two modes, one as to the Date of *Commission*—the other as to *Seniority*. The Court, in

As to Commission or Seniority.

([26]) If a Pecuniary Mulct is still to be retained, if should be only as to *Pay proper*—and to a limited extend, and should be not exceeding the value of 12 months Pay proper. Thus a Lieut.'s Pay is $60 \times 12 = 720$ Rs. a Year. This should be the maximum Mulct—and deducted in such monthly Proportions as the Court shall direct—instead of 60 Rs. a month, the Court may deduct 20 Rs. monthly (at Half Batta Stations) or such sum as should make the pressure equal to all Cases—The Officer to do duty all the time!

([27]) Omitting the words "*Suspended from Rank* and Pay, *and* Allowances" (which should have been *Rank and Pay*,—*or Rank, Pay and Allowances!*)

([28]) Annl. Art. War, 73.

([29]) Should be "*Grade*" *or* "*Degree*" of Captain, i. e. "Degree" of Captain—*Rank* rather means those of the same "*Grade*," &c.—A. and B. are both of the *Grade*, &c. of Captain, but A. is higher in Rank than B.

([30]) The word and implies both.—It is before stated "to lose his Rank in the Army, *or* in his Regt, &c."

([31]) Will include both, when intended.

the former case, may deprive an Officer of a year's rank as Lieutenant—it may not cause the loss of a single step [32]—If one or more steps are to be lost, say in the Officer's Regt., his Commission is not altered, he is placed immediately under the Officer next below him.

5.—This loss of Rank is in (Annl.) 73rd Article, in addition to "any Reprimand or other Punishment," but omitted in the Company's Article.

6.—As I before said, the Hon'ble Court think the loss of Rank bears hard in a "*Seniority Service;*" and no doubt it does. The Argument is this—The King's Officer, if placed a step below his Rank as Senior, &c. Lieut., can purchase his Company, and if no one above him has lodged his Money—*quoad* purchase, he loses nothing—and is one step removed from Promotion on a "Death" Vacancy—The *Company's* Officer cannot purchase up his loss,—the loss of one year in *his* Case is a permanent loss.

7.—But while it be admitted by *all* that the loss is permanent (unless the Officer below whom he is placed, dies! a contingency not brought into the Account) [33];—still must there not be some intermediate Punishment between a *Reprimand* and *Cashiering?* and if there is to be, it should be that which shall be the least injurious to the Service. It may be useful to point out the effects which may be produced by each mode. And I would suggest, that if the Mulct of

(32) If the Senior Ensign of the 48th Regt. were to lose a year's Rank, he would still remain Senior Ensign, as the Officer next below him is 3 years his Junior by Commission. The effect in the Army would be the loss of about 13 Steps—so that it is a loss affecting Army Rank, and the liability of being commanded by those formerly his Juniors—and if Regts. were raised he would have less chance of being removed by Seniority as otherwise might have been the Case. Here his place is altered in the Army.

(33) Major Anderson, 29th N. I., was 11 Steps above Major Wilkinson, 28th N. I. in the old 14th Regt. N. I. The *latter* is a Major of June, 1833—the *former* only of July, 1836. The Division of Regts. (1st May, 1824,) occasioned this supercession—and Officers 8 years junior to the Author, are Majors, (Delamain, 66th N. I. &c.)—but it is clear that except in the higher rank of a *Grade*, time may make up the difference lost.

Pay Proper be retained, that it should be in the manner proposed in para. 2. ([34])

8.—The words of Article *(King's)* 73—are "to the *Bottom* of or any *other* Place on the List of the Regtl. Rank in which he may be serving; or if a Superior *(Field Officer)*, to the *last* or any other Place on the List of the *Army* Rank in which he may be serving" ([35]); this applies to the Company's Army, as Army and Regtl. Rank must go together, unless the Major holds a Superior (Brevet) Commission. It has been recommended ([36]), to prevent injury to the Regt. by such reduction in the case of a Major, that, the Major if put down say, from 3rd to 6th, by which the 4th would become 3rd; the 5th—4th; 6th—5th; and the 3rd—6th—in such Cases there should be either a Transfer of these Majors, or of the Captains of the Corps to which the now 3, 4, 5 and 6 belong, on the Promotion of these Majors to Lt.-Colonels ([37]); i. e. when No. 4 is promoted to Lt.-Colonel let the Captain of No. 3 be promoted to Major in his proper Regt., and remain in his Corps; there would be two Majors, for a Time, in that Regt. and none in No. 4—till the next Line Step; and so in Nos. 5 and 6. ([38])

9.—Suspension of a Major is objectionable in this as in the other Cases—The Mulct, of Pay Proper and doing duty, would here, be less felt; Officers of this Grade can afford it better than Subalterns and Captains.

([34]) The Amount levied might go to the Mily. Fund; which would be the best mode of Appropriation!

([35]) There is only one Major in H. M.'s Regt. at Home—in *India* there are *two*. The effect in India, as to the Senior Major, would be to leave him still Senior.

([36]) By Mr. Cabell—Synopsis of Evidence before House of Commons.

([37]) These Figures represent the Case.

Now Majors	1	before	1
,,	2	,, ...	2
,,	3	,, ...	4
,,	4	,, ...	5
,,	5	,, ...	6
,,	6	,, ...	3

([38]) Any Plan rather than injure the old Regt. No. 3.

District or Garrison Courts-Martial. Martial.

Cl. 9, Annl. M. A. and Art. 76. 1.—This Court was established in H. M.'s Service in 1829, in place of the Genl. Regtl. Court-Martial of 1812; but the latter had 9, the present Court has 7, Officers to compose it—see Clause 9, Annl. M. A. and the 76th Article of War.

Proposed. 2.—This Court should be applied to the Hon'ble Company's European Troops (1) as where there is even a single Company of European Artillery, there is always a large Station (2), and the European Regt. is similarly situated. At some Stations the Artillery could hold them wholly composed of their own Officers (3); which is the Case in H. M.'s Service in Bengal, at several Stations (4).

3.—The Court constituted in the Company's Army should, conformably to Clause 9, Annl. M. A. and Article 76, be worded as follows :—

Proposed. " A District or Garrison Court-Martial to consist of not less than *Seven* Commissioned Officers except

(1) In Bengal 7,041 including Warrant Officers and about the same number at Madras and Bombay.

(2) The European Artillery are in Troops and Companies, stationed, as follows :—

	H. A.	F. A.	
Agra	..	2	Here are ample means of holding District, &c. Courts-Martial.
Benares	..	1	
Cawnpore	2	4	
Dinapoor	..	1	
Dum-Dum	1	6	
Kurnal	1	2	
M,how	1	1	
Meerut	3	1	
Muttra	1	..	
Nusseerabad	..	1	
Saugor	..	1	
Total	9	20	

(3) Cawnpoor, Dum-Dum and Meerut—as under Article 76, Officers of different Corps, or of Officers of Regts. of Arty. and Engineers and of the Genl. Staff; except an A. D. C. to Genl. Officer, Comg. District (Lr. Secy. at War, 1829.) They might as well have excepted the A. D. C. to the Comr. in Chief, &c.! It is curious that the employment of Staff Officers here used as to *District*, was not extended to *General* Courts-Martial. The present Dy. Qr. Mr. Genl. (Col. Barton) was while an A. Q. M. Genl., put on as Member of a Genl. Ct.-Martial. And I see no reason why the Officers of the Staff shall not, in certain cases, be employed in either Courts.

(4) *Chinsurah;* Fort William; Ghazeepoor, and Hazareebaugh.

the same shall be holden at Sumatra, or at Prince of Wales's Island, or at Singapore, where it may consist of not less than *Five* Commissioned Officers ;—to be composed of any Officers of different Corps, or entirely composed of Officers of the same Corps *to which the Prisoner belongs*—to be assembled by order *(without any other Warrant or Authority than this Act)*—of the Officer Comg. the Division or District being of the Rank of a Field Officer, *and not under the Rank of Captain* (5); and the President thereof shall be a Field Officer, and not under the Rank of a Captain; *not being the Comg. Officer of the District or of the Prisoner's Regt.* (6)

4.—"For the trial of all Persons under the Rank of a Commissioned Officer (7); for the Crimes of Desertion (8); Disgraceful Conduct; Immorality; Misbehaviour; Drunkenness (9); or Neglect of Duty (10)—And the Sentence of such shall be approved, or confirmed, or otherwise disposed of by the Officer Comg. the Division or District, *if in the East Indies, &c., except in Cases where the Offender shall be recommended to be discharged with Ignominy, when* Those Amenable.

(5) Where there is no F.O. present—and to provide for contingencies.
(6) So declared by Warrant, better in the Act and Articles of War.
(7) So declared by Circular H. G. 25th March, 1819, in the Case of Genl. Regtl. Cts. Martial—now District, &c. Courts.
(8) Allowed by Article 38.—And should try "*mutinous Acts,*" but not "*mutiny.*"
(9) See Index.
(10) G. O. H. G. 13th May, 1833, directed no Trial in the Cases of "striking or kicking a Serjeant; Quitting Post"—except by a Gl. Ct. Ml., but allowed "Drunkenness on Duty, under Arms, Drunk when Sentry, on Duty, or Piquet;" not to try before a Regtl. Ct. Ml.—grave Offences, which are directed to be tried by *General*, District, or Garrison Cts. Ml. The 85th Article declares "but whereas it may be advisable that some of the foregoing Officers," (better to have detailed them and the Articles)—"which in certain Cases may admit of less serious notice should be tried by District, Garrison or Regtl. Cts. Martial, in such Cases a Statement is to be laid by the Comg. Officer, before the Genl. or other Officer; with an application so to proceed"—while G. O. C. C. (Bengal,) 26th Oct. 1835, condemns the frequency of *Gl. Cts. Ml.*

I respectfully submit that, as to *India*, Cases which would not be properly tried in *England* by a *District* Court Martial, might be tried in the *East Indies, &c.* when an example by a Gl. Ct. Ml. is not necessary. The Limit as to Punishment excludes Sentence of DEATH or TRANSPORTATION; so it is simply a question as to *Jurisdiction*, and *Expediency!* It may be said that such an Extension would lessen the

the Sentence shall be approved or confirmed, &c. by the Com. in Chief."

5.—SENTENCE.—"Such Court ([11]) may Sentence any N. C. O. *(to be also reduced)* or Soldier, to Imprisonment, and may also direct that such Offender be kept in Solitary Confinement for the whole or any Portion or Portions of such Imprisonment;—or may Sentence any N. C. O. or Soldier to Corporal Punishment ([12]); and such Court may, in addition to either of the said Punishments, Sentence a N. C. O. or Soldier to Forfeiture of all advantage as to additional Pay and to Pension on Discharge, for Disgraceful Conduct;—

Disgraceful Conduct.

i.—In wilfully Maiming or Injuring himself, or any other Soldier, *even at the instance of such Soldier*;—With intent to render himself, or such Soldier unfit for the Service;—or,

ii.—In Tampering with his Eyes;— or,

iii.—In Malingering, Feigning Disease, Absenting himself from Hospital whilst under Medical Care—or other gross violation of the Rules of any Hospital—thereby wilfully producing or aggravating Disease or Infirmity, or wilfully delaying his Cure;—or,

iv.—In Purloining or Selling Govt. Stores;—or,

Comr. in Chief's Control over Judicial Proceedings—but the Genl. &c. Officer does send them to the J. A. G. for transmission to the J. A. G. (London), and the Comr. in Chief does, therefore, I presume, read them.

The Genl. &c. Officer would have the means of checking Crime by Punishment at the moment, as he *approves* the Proceedings—and if such District-Courts Ml. could Sentence to TRANSPORTATION, in extreme Cases, *such Sentence* to be approved by the Comr. in Chief—a Court of 7 instead of 13, Officers would effect the object.

Proposed.

Major Genl. Sir Jno. Macdonald, K. C. B., Adjt. Genl. H. M.'s Forces, stated before the Mily. Commission, that one object of a District Court was to take from Comg. Officers of Regts. the trial of certain Cases by Regtl. Cts. Martial and have the approval of the Genl. Officer—(tho' he thinks Comg. Officers should have more power)—I, therefore, propose to extend the Jurisdiction—but, the Com. in Chief to approve of Sentences of TRANSPORTATION,—and, if need be,—of Sentences exceeding six weeks' Solitary Imprisonment, or four months' Imprisonment.

([11]) Clause 9. M. A. and Article 77.

([12]) In the Cases laid down (G. O. H. G. 24th Augt. 1833.—See *Index*.

v.—In Stealing any Money, Goods, *or* ***Property***, belonging to a Comrade,—to a Military *or other* Officer,—to a Military Regtl. *or other* Mess ;—or,

vi.—In producing false or fraudulent Accounts or Returns ;—or,

vii.—In embezzling or fraudulently Misapplying Public Money entrusted to him ;—or,

viii.—In committing any petty Offence of a felonious or fraudulent Nature, to the Injury or with Intent to injure any Person, Civil or Military ;—or, for any other *disgraceful* Conduct, being of a cruel, indecent, or unnatural kind."

6.—STOPPAGES AND FORFEITURES.—"And every such Offender may further be put under Stoppages, not exceeding Two-thirds of the *Monthly* ([13]) Pay *and Allowances*, until the Amount be made good of any Loss or Damage arising out of his Misconduct ;—and if any N. C. O. or Soldier shall be convicted of any such *disgraceful* Conduct, and shall be sentenced to the *Forfeiture* of all Claim to Pension, *whilst serving* ([14]) the Court may further recommend him to be discharged with IGNOMINY from the Service ; *and in such latter case, the Sentence shall be Approved or Confirmed by the Comr. in Chief, &c.* ([15])" Disgraceful Conduct.

7.—And every N. C. O. or Soldier convicted of *Desertion* by a District or Garrison Court-Martial shall *thereupon* ([16]) forfeit all Advantages as to additional Pay, and to Pension on Discharge, in addition to any Punishments which such Court may award ;—and any such Court shall deprive a N. C. O. or Soldier, if Convicted of the Charge of *habitual Drunkenness*, of his Liquor when issued in kind, ([17]) of his Allowance in lieu of Beer or Liquor, or of any additional Pay, for any period not exceeding two years, Article 38. Desertion. Habitual Drunkenness.

([13]) Should not be "*daily*" in India.

([14]) "*Whilst serving*" in Art. 50—only in Cases of *Disgraceful* Conduct.

([15]) So in Practice---should be inserted in the Article. The Discharge with *Ignominy*, Drumming out, should be an Article of War---and not a G. O. H. G. (6th Augt. 1829.) See my Work (1834) p. 212 (12) for the Order.

([16]) Not to name the Forfeiture in the Sentence.

([17]) So in Article 51.

or of one penny a day of his Pay, for any period not less than six months and not exceeding two years; subject to Restoration on subsequent, good Conduct; Provided that such Court-Martial shall not have Power to pass any Sentence of DEATH or TRANSPORTATION. ([18])

8.—May Sentence to Corporal Punishment, not exceeding 300 Lashes ([19])—" and (Clause 11, M. A.) " it shall be lawful, &c. in addition to any other " Punishment, to direct that the Offender be marked,

Proposed. " &c. with the letter (D)"—*should be—shall in all cases, direct, &c. to be marked with the* letter (D) ([20]).

Warrant Officers. 9.—WARRANT OFFICERS.—Warrant Officers are, under Article 100, triable by this Court. The President not to be under the Degree of a Field Officer, *and not of less Rank than a Captain* ([21]); and not more than 2 Members under that of Captain.

Advantages. 10.—The advantages of this District, &c. Court-Martial are:—

i.—That it admits of the Trial and Punishment of Crimes, not now triable by a Regtl. Court-Martial; without the intervention of a Genl. Ct. Martial.

ii.—As they *may* be composed of their own Officers only—the Men ([22]) may be made to look up to their Officers as their judges—in the trial and punishment of Crimes of a higher Degree than before.

([18]) See Note 10—bottom recommending *Transportation*.

([19]) In Cases laid down in G. O. H. G. 24th Augt. 1833.

([20]) Circular, War Office, 8th April, 1820—orders the Marking (D) by *District* Courts-Martial—why not by *General* Courts-Martial? and why not in Clause 11 use the word "*shall*"—instead of "*it shall be lawful.*" If it be desirable to mark Deserters, it should be ordered—for, now, in India it is seldom done. *Simmons*, p. 273, (1835)—alludes to the "*Circular*"—possibly it may not be intended to apply to *India*; as I have said before, I never saw the Order till the other day—nor did I ever hear of it before—See p. 13 Note 31.

([21]) As an Article 77.

([22]) —5 out of the 7 Officers should—(if the Court be composed of Officers from other Corps—be taken from *European* Corps. The discipline of *European* and *Native* Corps is so different—and young Officers of Native Corps should not be put on as Members. It is not the length of Service in the Army either—but the serving with European Troops, that qualifies the Officer for such duties. I think if a young Officer did duty with some European Corps for 6 months before joining Native Corps—he would learn the mode of treating Europeans—to the advantage of the Service. Cadets did, formerly, do duty with our European Regt. I would send 3 or 4 to each Corps.

iii.—7 Officers instead of 13 ([23]) can try Cases and Sentence to Imprisonment, or Corporal Punishment beyond the Powers of a Regtl. Court.

iv.—And, lastly—in the Company's Army these Offences are not defined—and tho' they may be tried under "*all Crimes not Capital, &c.*"—([24])—still we have not the *Stoppages*; the *Forfeitures*—as to Pay or Pension; Nor the *Ignominious Discharge*. In fact, we want the Improvements introduced into H. M.'s Army since 1823; when our Code 4 Geo. 4. c. 81, &c. was framed!

Previous Convictions.

1.—These are used in General, and District or Garrison, Cts. Martial; and should be introduced into the Company's Army: certainly as far as the *European* Soldiers are concerned. Art. 84.

2.—The words of the Article are "Every *N. C. O.* or Soldier shall be liable to be tried and punished for Desertion from any Corps into which he may have inlisted, or from the Service, &c."—"Every Desertion previous or subsequent—([1]), to that for which he shall be under Trial, as well as *every* previous Conviction for *any* ([2]) *Military* Offence *as well as Summary Convictions by Comg. Officers, or decisions recorded in* Proposed.

([23]) The usual number may under Company's Section M. A. XIX. be "13 or 9 as the case may *require*," i. e. under Sect. XXII. No Sentence of *Transportation* awardable without 13;—unless out of the Provinces.

([24]) Section XXI. Art. 2.—Articles of War.

([1]) "Subsequent" applies to former Corps trying such Desertions. See the Remarks on Section VI. Art. IV. *Index*.

([2]) Capt. Simmons, p. 228 (1835) Note 4, states—"The Author had, in common with every Officer with whom he ever conversed on the subject, considered that previous Convictions, as used in the 21st Clause of the M. A. and 84th Article of War, could imply only Convictions by Cts.-Martial, but he is now assured, upon the highest official legal Authority, that the term Conviction was introduced into the M. A. as comprehending *all recorded Offences*, whether submitted to trial by *Cts. Martial* or not; and that on proof of notice to the Prisoner, (as laid down in Clause 21 and Art. 84), all *Summary Convictions by Comg. Officers*," or decision against a Soldier recorded in the *Defaulters'* Book, (not limited to Acts of Drunkenness, as in Art. 51, and as intimated in the two first lines of page 696 of the Genl.

the Defaulters' Book may (3) be given in Evidence against him; *and such previous Convictions, &c. so given in shall be received by the Court,* (4) and, in like manner, in the Case of any N. C. O. or Soldier tried for any (5) *Military* Offence whatever, any previous Convictions may, *as above directed,* be given in Evidence against him;—provided that no such Evidence shall in any case be received until after the Prisoner shall have been found guilty of such Offence, and then only for the Purpose of affixing Punishment; —and provided also, that after he shall so have been found guilty, and before such Evidence shall be received, it shall be proved to the satisfaction of the Court that he had previous to his Trial received notice of the intention to produce such Evidence on

Regls. of the Army,) may be admitted and dealt with as previous Convictions."

I have added the word "*Military,*" because, it does not seem to be the intention to include Convictions in *Civil* Courts. But, I think such should be included. Suppose a Soldier tried for *Theft* in the Supreme Court—and imprisoned for 12 Months. He rejoins his Regt. at Cawnpore—and commits the same Crime—if you cannot give in his former Conviction, you do not act as if he was retried by the Supreme Court—and, besides, I think all his misdeeds should be considered on passing Sentence!

(3) It is the opinion of some that the word "*may*" is proper, as it gives the Comg. Officer the Power to withhold previous Convictions. I submit that it is hard to give them in, in one Case, and not in other Cases. Suppose an amended Character had six previous Convictions against him—and another indifferent one had *one* previous Conviction—would the keeping back the 6 be just, and, in the other Case, giving in the other? In the Case of the man with 6 Convictions, his amended Character will avail something with the Court; or it will with the Genl. Officer approving. From *Capt. Simmons's* remarks (See Note 2) they would seem to be meant to be given in, in all Cases. I doubt, if, under Art. 82 *former Desertions* could be kept back. In the Case of Deserters (*See p.* 13) (31) the M. A. makes it *lawful* to mark with letter (D)—but a "Circular" *orders* it.

(4) To prevent the recurrence of such Cases as animadverted on in G. O. C. C. 25th July, 1836—and a Legislative Enactment will be as well.

(5) It is declared (G. O. P. C. C. (King's 21st April) 14th May, 1835) "and on trials for the latter (*Non-Mily. Offences*) previous Convictions ought not to be taken into Consideration." For the reasons assigned in Note 3, I think they should be considered—for my opinion is, that *all* a Man's offences should be brought up against him. In Case of a man tried for *Murder*, or any very grave offence liable to Sentences of Death or Transportation, I should say not:—but in other Cases. I throw out this for future consideration.

the same ([6]) ;—and provided further, that the Court shall in no case award to him any greater or other Punishment or Punishments, than may by the M. A. and Articles of War be awarded for the Offence of which he shall so have been found guilty."

3.—The object of the use of Previous Convictions is to mete out Punishment ([7])—But "in the case of a Soldier tried for habitual drunkenness, and acquitted

([6]) The Prisoner is warned by the Adjt.—and before the Meeting of Genl. Cts.-Ml. the J. A. records the previous Convictions at the foot, or on the back, of the Copy of Charges, as ordered (*G. O. C. C.* 20*th July*, 1833.) The Charge before the Court should not have them so recorded. The J. A. has them on a separate sheet of paper. Some of the Officers of the Prisoners Regt. may know that there are previous Convictions. At a District Court-Martial the President is ordered to ascertain that the Prisoner has received due notice of the *intention* "before the Court is sworn" (*Circular, No.* 658, *War Office*, 24*th March*, 1830.) If there be any object in concealment, this latter Course is incorrect—the President has no right to know the Fact—it should be done by simply asking the Adjt. (as I always do—) before they are received at Genl. Cts-Ml. Adjt. —— sworn. *Qn.* "Has the Prisoner received due notice that the previous Convictions against him will be given in Evidence? *A.* yes." If the Adjt. had neglected doing so (never known to be the Case) they must be *not* received. As to District Courts-Martial the Adjt. should still give Notice. After the Prisoner has been found guilty, the Adjt. should be sent for—he produces the previous Convictions. Adjt. (*first asking if there are any*) sworn—" 1—The above Question as noticed—2—*Qn* by President. Be pleased to produce the former Convictions? A.—Here they are—(producing original Cts.-Ml —or certified Copies. Also as in Note 2—Defaulter's Book and Summary Notices of Convictions)" Proposed.

The J. A. (or President) reads the former Crimes—Convictions—Sentence—Sentence inflicted—Sentence remitted—and records such facts concisely (Lr. No. 80, J. Adv. Genl's office, 3rd March, 1835.)

The Adjt. it is seen, must know that the Prisoner has been convicted—where is the harm. He has read the Ct. of Inquiry and would have been surprised at an Acquittal—a trial is not ordered unless there be sufficient proof adducible—Suppose the previous Convictions were always sent to the Court—and where there were not any, a sealed Letter, the envelope recording "Previous Convictions," the Court as now, would be kept in the dark—but the Adjt. must be called in (or some one) to authenticate the Document, Handwriting, &c. So that unless their bare transmission, signed by the Comg. Officer and certified, was admitted—Some one must know, and, as has been remarked, the Officers of the Corps see him perhaps go into the Court—This is so often—But, as in the Navy even the Sentence is read at once to the Prisoner—we need not be over-fastidious on the above point.

([7]) See *Index*—Miscellaneous matter.

or released in consequence of the disapproval of the Sentence, he cannot subsequently, if charged with habitual drunkenness, have the Acts of Drunkenness brought against him which were given in Evidence on the first trial." ([8])

([8]) Simmons, p. 302. and Note 2—" A Prisoner, tried for habitual Drunkenness, having been released in consequence of the *Disapproval* of the Proceedings, the J. A. G. (*Rt. Hon. R. Grant,*) was officially asked, whether the instances of Drunkenness which had been brought against him on this occasion, might hereafter be again adduced against him in support of the charge of habitual Drunkenness, replied : " I am of opinion that, as the Prisoner *might* have been found guilty of the offence charged against him, and as indeed he *pleaded guilty* to it, none of the acts forming a part of the offence can hereafter be adduced against him in support of a *similar* charge."— I will illustrate this by the latest *approved* Case. G. O. C. C. (K. T. 13th) 16th May, 1836 :—

Private Anthony Caffrey, No. 518, No. 8. Co. or &c. Co., H. M's 13th Light Infy.

3rd Charge. " With having been drunk on the 19th April 1836, this being the 5th time of his having been drunk since the 1st of January 1836, being within a period of 4 months, and thus constituting an act of habitual drunkenness; the previous instances of drunkenness being as follows:

Drunk —————— 19th Feb. 1836.
Drunk on duty ———— 21st Do.
Drunk for Evening Parade—1st April 1836.
Drunk —————— 11th Do.

The 51st Article allows of Forfeiture if 4 times drunk within 12 months—or twice drunk when on or for Duty or Parade, or on the Line of March.

I have to remark as follows :

i. The original Charge is for Drunkenness on the 19th April, 1836. The 4 previous Instances are taken from the Defaulters' Book.

ii. It would seem that in the Case quoted by Capt. Simmons, the Comg. Officer did not approve of the Sentence—let us suppose that the Case of Private Caffrey had been disapproved,—the Charge of being drunk or the 19th April, 1836. It follows that there should be in such case a Remark made against the 5 Instances, " *not allowed to be again brought forward;*" and that, under Article 51 the Soldier must be 4 or 2 times drunk, before he can be again charged with " habitual drunkenness."

iii. The next Remark is that, though the Prisoner *pleaded guilty*, he was not found guilty—hence, as I have always thought, a plea of *guilty*, though it may, legally, insure, in Law, a *Conviction*—may still, " legally, produce on *Acquittal.* The Genl. Regns. and Orders of the " Army, p. 202, direct that, in every Case, *in which a Prisoner pleads " guilty*, it is the Duty of the Court-Martial, notwithstanding, to " receive, and to report in their Proceedings, such Evidence as may " afford a full knowledge of the circumstances, it being essential " that the Factsand Particulars should be known to those whose duty " it is to report on the Case, or who have discretion in carrying the " Sentence into effect."

REGIMENTAL COURT-MARTIAL.

1.—The Punishment, as to Quantum is not laid down ([1]), the words are "Corporal ([2]) or other Punishments; which said language is rather vague. Section XIV. Art. X.

2.—The 79th Article awards Imprisonment, for any Period "not exceeding 30 Days" ([3]) or to Solitary Confinement "not exceeding 20 Days," or to Corporal Punishment "not exceeding 200 Lashes, ([4]) or to other Punishments according to the usage of the Service, and the character and degree of the Offence;—and whenever any such Court-Martial shall Sentence any N. C. O. *(to be first reduced)* or Soldier to Imprisonment as aforesaid, it may (if it shall think fit) direct that he be kept in Solitary Confinement for a certain Portion or Portions of the Period of such Imprisonment; provided that when such Court shall direct the Imprisonment to be part Solitary and part otherwise, the whole Period of such Imprisonment, including the Solitary part thereof, shall not exceed 20 Days;—and such Court may, in addition to any Punishment which it may be competent to award, Sentence any N. C. O. or Soldier, to be put under Stoppages not exceeding *Two-third* ([5]) of his Stoppages. *Monthly* ([6]) Pay *and Allowances*, until any Loss of or Damage to his Horse, Arms, Clothes, Accoutrements, or Regtl. Necessaries, *or any such placed under his charge*, ([7]) or other Loss or Damage occasioned by his negligence or misconduct, be made good."

3.—"Shall consist of not less than 5 (except, &c.) Art. II. where 3 may be sufficient ([8]). "And shall give judg-

([1]) G. O. C. C. 1st Feb. 1821, requires approval by Genl. Officers if more than 300 Lashes are to be inflicted.

([2]) G. O. H. G. 24th Augt. 1833—details the Cases in which awardable—and though not specially applied to the Company's Army; is acted upon.

([3]) In the Company's the old 6 weeks of the King's, or 42 days retained. See *Index*—Miscellaneous Matter.

([4]) See Note 1.

([5]) Half in the Company's.

([6]) Not "*daily*" in India! Section XI. Art. III. says "*Weekly*." I find that one King's Regt. pays every 5 days.

([7]) See, *Stoppages*, under G. O. G. G. in C. 7th May, 1819, *Index*.

([8]) The President may be a Lt. having served 8 years—Art. XVI. Has no casting Vote.

ment *as to the Finding* and Sentence, by the Majority of Votes (9), which Sentence is to be *Approved*, Confirmed, or (10) &c. by the Comg. Officer *(not being the President or a Member of the Court-Martial.) No challenge of Members, &c. allowed.*

OFFICERS COMG. IN ANY PLACE WHERE THE FORCE SHALL CONSIST OF DETACHMENTS FROM DIFFERENT REGTS. OR INDEPENDENT COMPANIES; OR OF TWO OR MORE REGTS.

Sec. XIV. Art. XII. Dett. Ct.-Ml.

1.—Officers Comg. Districts, Garrisons, Forts, Castles, or Barracks under the above circumstances may, where there shall not be a sufficient number of Officers of the Corps to which the Person to be tried shall belong, or in which the Dispute or Criminal

(9) " *Votes*" in Article 79. " *Voices*" in the above Article (XI.)

(10) The word "*Confirmed*" is used by Articles X ,XI., XII.,XIV. of Section XIV—but, as to *Genl.* Ct. Martial Art. IX. the words are " no Sentence of a *Genl.* Ct. Ml. shall be put in Execution, till after a Report, &c. to the Genl. or Officer Comg. in Chief, or *to* some other Person duly *authorized to confirm* the same, and until his Directions shall have been signified thereupon"—so in Art. 72—In Section IV. 4 Geo. 4. C. 81—" *until confirmed.*"

The precise word need not be used. The word to "*Confirm*" means to " establish, settle, to complete, to fix. To *approve*—to allow of. *Approved*, examined"—*Johnson.* The use of any word which expresses Approval or Confirmation—or by which the Comr. in Chief allows of the Execution of a Sentence—the same having been submitted to the Test of his ordeal, is sufficient.

A, appoints B, his Agent—having done so and given unlimited authority, A must sanction, approve, or confirm the Acts of B, till he (A) recalls the License—A may *confirm*, but, not, *approve* of the Acts of B,—confirm, *there*, means a simple legal Act demandable of right by B, but *approval* embraces a *legal* and *moral* Sanction—and even the words " *I sanction*"—or " *I direct*, or *I order* the Sentence to take effect," or any other words, or terms, would be legally sufficient.

I am aware that the Advt. Genl. (Pearson) is of opinion that the word "*approve*" is equally legal with that of " *confirm.*"

I have before said (See *Index*)—The best explanation is afforded by the words of the " Comr. in Chief's Warrant to Genl. Officers " which Proceedings are to be sent for my " *Approval*"—and the Oath " taken by Members of all Courts—" I will not divulge the Sentence, &c. till duly *approved.*"

Even the signature of the name of Persons in Authority is proof of the Sanction of such Authority : thus in the Annual Articles of War—the King—signs merely

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Matter in question shall have happened; and also every Officer Comg. any number of Troops or Companies detached from different Corps, and formed into a separate Regt. or Battn., may assemble Cts.-Martial composed of the Officers under their respective Commands; and such Courts shall have the like powers, and proceed in the like manner as Regimental Courts-Martial, and their Sentence shall not be executed until it shall be confirmed, &c. by such Govr. or Comg. Officer—*not being the President or a Member of the Court-Martial.*

2.—The Articles X., XI. apply to this Article—This Article is applicable also, to Cases where the Govr. or Commander shall "judge it to be most conducive to the Good of the Service," to form Courts-Martial composed of Officers taken from different Corps—and may apply, (properly) to Cases where there shall be a "Dispute or Criminal Matter," between two Men of different Corps; though there may be two or more complete Regts.—in this latter case it should be termed a "*Brigade* Court-Martial"—in the other a "*Detachment* Court-Martial." Brig. Ct. Ml. Dett. Ct.-Ml.

3.—There is no Challenge of President or Members allowed. X

REGIMENTAL DETACHMENT COURT-MARTIAL.

1.—Though not provided for, specifically, there is no doubt that any Officer Comg. two or more Troops or Companies detached from his Regt., may hold a Court-Martial, if he has Officers enough to form one. A Lieut. of not less than eight years as a Commissioned Officer ([11]) as President, and two other Officers. Indeed if he were obliged to be himself President (in which case he could not approve or confirm the Sentence)—where he can himself approve and confirm the Sentence, he should do so, and should afterwards send the Proceedings to Regtl. Head-Quarters. Regtl. Dett. Ct.-Ml.

2.—Capt. Simmons, p. 78, states that a Ct.-Martial may be convened by any "Officer Comg. a Detach-

([11]) Art. XVI.

ment of a Regt., of whatever Rank, having under his orders a Captain ([12]) to appoint as President, and a competent number of Officers to form a Court." I mention this to show the "Custom of War" in H. M.'s Service.

Proposed. 3.—There seems no written Authority for holding such Courts, and Articles X. and XII. do not provide for the Case—I therefore propose an Article to the following effect—that "when two or more Troops or Companies shall be detached from the same Regiment, the Senior Officer Comg. may hold Courts-Martial, to be formed, and the Proceedings to be conducted, in like manner as in the Case of a Regtl. Court-Martial—and the said Senior Officer shall approve or confirm the Sentence, or otherwise dispose of the same—and direct Execution of such Sentence to be carried into effect—making an immediate Report thereof to the Officer Comg. the Regt.—and to send thereafter the Proceedings to Regtl. Head-Quarters."

4.—No Challenge of the President or any Member of the Court allowed.

Trial of Mutiny or Gross Insubordination or other Offences, Committed on the Line of March.

Clause 10, Anol. M. A. 1.—This Article, it will be seen from its perusal, is eminently deserving of a place in the E. I. Company's Code, it recites—"In Case of Mutiny or Gross Insubordination or other Offences committed on the Line of March, the Offence may be tried by a *Regtl.* Court-Martial, and Sentence confirmed and carried into Execution on the spot, by the Officer in the immediate Command of the Troops;—provided that the Sentence shall not exceed that which a Regtl. Court is competent to award."

Drunk on March. 2.—*By Article* 53—a Soldier "drunk on the Line of March may, on conviction, be sentenced to be deprived of a Penny a day of his Pay for any period

([12]) An Officer (Lieut.) of 8 years standing in the Company's Army, (Art. XVI.)

not exceeding 30 days, in addition to any other Punishment which such Court shall award.

3.—*Article* 85.—" Any Sentences confirmed by the Comg. Officer on the Line of March, shall be reported to the Genl. Officer, and noticed in the Monthly Return of Courts-Martial sent in to the Adjt. Genl." By the above Arrangement the Superior Authorities are made acquainted with the Crimes so committed and punished. **Reports of Infliction.**

4.—Under the G. O. H. G. 24th August, 1833, Corporal Punishment is awardable in the Case of " Mutiny or Gross Insubordination—and Violence, or using or offering Violence to Superiors—Drunk on Duty—Sale of, or Making away Arms, Ammunition, Accoutrements or Necessaries—Stealing from Comrades ; or other disgraceful Conduct." **Corporal Punishment.**

5.—It is difficult to imagine what Punishment other than Corporal Punishment, could be inflicted in a Case of " Mutiny, or Gross Insubordination" on a Line of March—It no doubt accords with the benevolent, philanthropic, and Christian feelings of men, to do away if possible, with the use of the Lash. But I will ask, in this place, what Plan the abolitionists would adopt in Case a Soldier should be seized whilst pulling off the roof of a House (or Chupper) for fire-wood—or should refuse to obey any orders given upon such or any occasion ? **Reasons for.**

6.—An immediate example is required, seizing and confining the man will not operate as an example. **Example.**

The 101st Article of War directs Provost-Marshals to be appointed to " repress all Irregularities and Crimes *abroad* (1) which may be committed by Troops in the Field and on the Line of March—their Powers shall be regulated by the General Comg. according to the established Usages of War and Rules of the Service ;—their Duties are to take charge of Prisoners confined for Offences of a General Description ;—to preserve good Order and Discipline ;—to prevent Breaches of both, by Soldiers and Followers of the Army, *and to punish on the Spot*, or the same day, **Provost-Marshals. To repress Crimes.**

(1) Should be applied to the E. I. Company's Troops.

those whom they may find in the *immediate Act* of committing Breaches of good Order and Mily. Discipline—Provided that the Punishment be limited to the necessity of the Case, and shall accord with the Orders which the Provosts may from time to time receive from our Comr. of the Forces in the Field (2), and that whatever may be the Crime, the Provost Marshal shall *see* the Offender commit the Act, for which *Summary Punishment* may be inflicted, or if the Provost-Marshal or his Assistants should *not see* the Offender *actually commit* the Crime, but that *sufficient Proof* can be established of the Offender's Guilt, a *Report* shall be made to the Comr. of our Army in the Field, who is hereby empowered to deal with the Case as he may deem most conducive to the Maintenance of good Order and Mily. Discipline." (3)

Summary Punishment.

Caught in the Act.

7.—"The Duties of Provost Marshals being limited to the Punishment of Offenders whom they may *detect in the actual Commission* of any Crime, the General Comg. our Forces in the Field will cause them to exercise the Powers entrusted to them in such Manner and under such Circumstances as he may consider best calculated to prevent, and instantly to repress, Crimes injurious to the Discipline of our Army and the Public Service."

Constabulary Force.

8.—If the System of an Army Constabulary Force were to be formed, and placed under the orders of a Provost-Serjeant to accompany each Regt., or Detachment, something might be done, provided they were empowered to inflict summary and a severe beating, in cases of actual Plunderers (4)—and, whether caught in the Act, or proved afterwards to have committed

(2) It is to be observed that small Detachments have Provost-Serjeants—but I do not know with what extent of authority they are invested—The 101st Article relates to an Army in the Field.

(3) In other Words to order a Trial; but, Corporal Punishment is, now, (*G. O. G. G. of India in Council, 24th Feb.* 1835,) not awardable in the Case of *Native* Soldiers.

(4) "*He that spareth the Rod, spoileth the Child,*" in time of War cutting down, or shooting, must be had recourse to if no flogging.

A Mounted Patrol (*Military Police*) would be best—and there might be some at each Station, and paid as I before advised, out of the Proceeds of the Cultivation of Cantonment Lands.

it—Stoppages as under Article 77 ([5]) should be made to "make good the Damage," besides other Punishment!

9.—As to Cases of Depredation on the Line of March, they can only be repressed, by severe Punishment on the spot; or, if not, as soon after as possible; and this *may* be effected by a Constabulary Force; ([6]) but those who are in favor of the total Abolition of Corporal Punishment must be prepared to sanction the expense of such a Force as shall afford Security. All Military Men know that Guards and Sentries are placed over Villages; but if a Soldier shall commit a serious Offence against the Property or Persons of the Inhabitants, a trial and delay of Punishment will not do. Line of March.

10.—We will suppose the Case of a *Native* Detachment which may have the power to hold Detachment Courts-Martial, sitting as General Courts-Martial, ([7]) still the Sentence is to be approved or confirmed by the Comr. in Chief. Here, even, the force of an immediate example is lost.

11.—The Cases of Crimes of a serious nature against Discipline, particularly on actual Service, cannot, without the infliction of Corporal Punishment *on the spot,* On Actual Service.

([5]) "In Committing any petty Offence of a felonious or fraudulent Nature, to the Injury of, or with Intent to Injure, any Person, Civil or Mily."

([6]) All British Officers, &c. (or those of every Nation, I sincerely hope) must desire that the occasions for the infliction of Corporal Punishment should be as few as possible—If it is revolting to the human mind, to witness a sentence of Death in Cases where the Soldier has committed a Crime against Mily. Law *and against the Laws of his Country!* (by taking away the life of his Officer, or N. C. O, while acting in the Execution of his Duty,) such must equally be the feelings of Military as well as of persons in Civil Life—but, let the Abolitionists reflect (for they belong to both Classes,) how often the *non*-exhibition of the "renounced Corporal Punishments, "may be reasonably likely to render a resort to the "*ultimum supplicium*" necessary! did not the late severe laws in the Case of Forgery give encouragement to the Commission of the Crime; they were repeated with Impunity—since those who suffered from the Acts were loath, from motives of Humanity, to subject the offender to the Punishment of Death—and there was no intermediate Penalty!—motives of Humanity, and the necessity for Protection to Property, rendered the Law less severe. For whether the Forgery involved a Loss of 5£, or 5000£, there was no distinction—the Punishment was *for Forgery!* and *Death!*

([7]) Clause 12. Anni. M. A., and Section XX. 4. Geo. 4. c. 81. Composed of 3 Officers.

be adequately taken notice of. And I would suggest, that where such Crimes are committed on actual Service or the Line of March, whether by a *Native* Genl. or other, Court-Martial, a Sentence of "Corporal Punishment" should not be inflicted on the spot, without any Reference—I mean in the extreme Cases of actual Plunder, or Gross Insubordination, as is now authorized under Article 101 in the Case of Regtl. Courts-Martial (8); for even the extended Provision under Clause 12 M. A. and Section XX. 4. Geo. 4. c. 81. as to Detachment Courts-Martial, is paralized by the reference for Approval or Confirmation of the Sentence (9.)

Sentences published.

12.—If a Sentence of "Death" or "Transportation" were awarded in Cases on actual Service, or where an Example was requisite, I do conceive, that, as in the Navy, the immediate Publication of the Sentence to the Troops—(subject to the Approval or Confirmation of the Comr. in Chief), would be useful. —Here is a Case where the Legislature declares that the Sentence shall be sealed, and obliges the President and Members, by an oath of secrecy, not to divulge it (10) whereas its being made known would be advantageous to the Discipline of the Army—and Christian-like and charitable to the poor man Sentenced, perhaps, to Death; and who may not have time to prepare himself

(8) For, I apprehended, Article 101 is pointed to Cases in Regt; but as the men of a Corps may be seized, on report, by the Division Provost-Marshal, I conclude the Trial would not be Regtl.

(9) The Dett. Cts.-Ml. of 3 Officers should execute Sentences equal to 300 Lashes, and Imprisonment as under Article 101—for, now, the Regtl. Ct. Ml. can, on the Line of March, punish, on the spot, while the Detachment Court is powerless—it can try—but the Sentence cannot be inflicted till the Comr. in Chief approves or confirms ! ! !

(10) The concealment of the Vote, &c. of the President and Members is of high Mily. Importance—If an Officer be tried, and he knew what Members found him Guilty, or voted the highest Punishment; he would look at such Members as his Enemies—and hence this Clause in the Oath—But, it could never signify were it known what is the Sentence passed. It is so in the Navy—and in all Criminal Courts—in the latter the Prisoner hears the Verdict of "Guilty"—and he, thence, knows the Sentence must be Death, Transportation, &c. In the Navy, though the Sentence is pronounced in open Court, it must, I believe, if *at Home*, be approved, or confirmed by the Lords-Commissioners of the Admiralty.

to leave this World. The present Comr. in Chief has shown consideration in such Cases ([11]).

13.—His Grace of Wellington stated in his Evidence before the Military Commission, that it was not the disgrace of the *infliction* of Corporal Punishment; but the disgrace of the *Crime* of which the Offender has been convicted.—Here let me ask, if it was directed like the Recording—a Sentence of Death, ([12]), that it shall be lawful to *record* a Sentence of Corporal Punishment, but instead thereof to award and inflict Imprisonment, would not the Man's family—would not the Men in his Company, look at the Disgrace of the *Crime committed*, say, Robbery, Theft, ([13]) Forgery, or Perjury; certainly they would.

14.—Let us look at Imprisonment, particularly Solitary Imprisonment—Did not Sir R. Peel on the question of its Substitution for many Crimes, in lieu of a Sentence of *Death*, declare, as Minister, in the House of Commons, that its effects were most injurious, and that *Insanity* had been produced by six weeks of

Imprisonment, Solitary.

([11]) In the Case of Private Reeves, H. M.'s 13th Light Infy. Sentenced to be *hanged*—H. E. directed that "the Sentence of Death awarded against the Prisoner Terence Reeves, is to be carried into Execution, after day-light, on the third morning (Sunday excepted) after receipt of this order, &c. at Kurnal." G. O. C. C. 14th May, 1836.

([12]) Under 9 Geo. 4. C. 74. S. 27—an attribute of the Mercy of a sanguinary Law; but not in Mily. Courts.

([13]) It must be well known that, in the Navy *running the Gauntlet*, a Punishment inflicted by Seamen, in the Case of Thefts, or other disgraceful Crimes, was a much more severe one, than that inflicted by the Boatswain. And, formerly, in the Army there were Troop and Company Courts by which, in similar cases, a more severe Punishment than that by the *Cat-o' Nine Tails*, was inflicted. As observed by Genl. Foy, (Histy. of the War in the Peninsula) Vol. I. p. 186. (1827):—

"The notions of distributive Justice are so widely diffused by the "English Constitution, that the Soldiers constitute of their own "motion, in the several Companies, a Species of Court-Martial, "composed of three Soldiers, a Corporal, and a Serjeant who presides. "These confidential tribunals look particularly to infractions of dis-"cipline in their immediate relations with the interests of their "Comrades: they punish the delinquents with *leathern thongs, and* "*their early Justice frequently prevents one more severe!!!*"

Such Courts were held by Sanction of the Comg Officer—in Cases of Petty Thefts in the Barracks—Stealing from a Comrade, &c. If proved guilty, he ran the gauntlet of the whole Company; and many Officers have declared that it was a more severe Punishment than that by the Drummers of the Regt.

this Punishment ([14]).—If such an Effect be produced, pray is not the Punishment of *Solitary Confinement* as cruel as that of Flogging; and is it not *equally a Corporal Punishment?*—What does it signify, whether you inflict a severe Punishment which may last half an hour, or another which may be gradually undermining the constitution for months—if the same result—severe bodily Punishment, is undergone ([15])!!!

Absence without Leave; not triable as, if beyond 21 Days: but as Desertion.

Article 81. 1.—Under this Article no Regtl. Court-Martial can try, any Soldier for Absence without Leave, if the Absence has exceeded the period of 21 days.

Two Months. Ct. of Inquiry. 2.—"If the Soldier shall have been illegally absent from his Duty for the space of 2 *months*, a Regtl. Ct. of Inquiry of 3 Officers ([1]) shall assemble;—and, having received Proofs of the Fact, declare such Absence and the Period thereof; and the Officer Comg. the Corps

([14]) In America, they oblige those undergoing the Punishment, to work, or take exercise Morning and Evening. It must be done, in India, or the Constitution of the Prisoners must suffer. There should be hard-labor of some kind; hard-labor, properly conducted, is nearly the same as that undergone under Transportation. Instead of transporting *European* Soldiers to *N. S. Wales*—they might be sentenced to Imprisonment, with hard-labor—the latter to be undergone at *Simla*, or in other Mountainous Places—The Expence of Transportation is great. At Simla, &c. they might be employed in making Roads, or on any public Works.

([15]) As to the severity of *Flogging*, it is not the amount inflicted—If 2 Men are sentenced to 300 Lashes each—the Man who can only receive 25, is as much punished as the other who may be able to stand up and receive the whole 300.

In the *Native Army* it has been declared, that since the abolition of Flogging in the Civil Jails (still used as *Prison-Discipline!!!*) it would be improper to continue it in the Army,—but, let it be recollected that it is the *turpitude* of the *Crime* and not the *infliction* of the *Lash!!!* If a Native Soldier is tried for Robbery and sent to work on the Roads, is the *Regt.* disgraced—No, certainly not—the *Convicted Felon is*—and he is always discharged, in consequence.

If Corporal Punishment should be confined to *General* Cts.-Martial it would be deprived of its *useful* effect—the *immediate* infliction by a *Regtl.* Court is an Example—if by a *General* Court-Martial, there is a delay of from 20 to 30 or more days!!!

([1]) Rank not mentioned—should be the same as for a Regt. Ct.-Martial.

shall record such Absence, and the Declaration of the Court of Inquiry thereon, in the Regtl. Books ;—if such Soldier shall have been apprehended or *have* surrendered before such record shall have been entered, or shall subsequently be apprehended or surrendered, he shall be tried by a Court-Martial empowered to try Desertion (2); if convicted the Sentence of any such Court shall be inserted in the Soldier's Discharge ; Provided that in Case he should have subsequently served and performed good, faithful, or gallant Services in our Army, he may, on the same being duly certified by our Comr. in Chief, be eligible to be restored to the Benefit of the whole or of any Part of his Service ;—and should the Recommendation be approved [by us, our Order for the Restoration will be signified thro' the Secy. at War,"] *the Order for the Restoration will be signified thro' the Secy. to Govt. Mily. Dept.*

3.—Under Article 81—" a Soldier may be tried for Desertion, without reference to the number of days during which he has been absent." The Soldier convicted of Absence without Leave (or Desertion) under Article 52, " shall forfeit his Pay for the Day or Days on which he shall have been guilty of the Offence" (3). Desertion any Period.

4.—In the Company's Army, Section VI. Art. VI. there is no Forfeiture of Pay, &c. during the Day or Days absent. With regard to N. C. O. or Soldier, Section XLIV. M. A. declares that " it shall and may be lawful for the G. G. or Govr. in Council to withhold the Pay of any Officer, N. C. or Soldier, for any period during which such Officer, &c. shall be absent without Leave." Art. V. directs that " the Officers' Pay and Allowances, shall be withheld until a satisfactory Explanation shall have been given."

5.—The Directions contained in paras. 1 to 3 should be applied to the Company's Service. Proposed.

(2) Article 38. Genl., District or Garrison.

(3) And, as no Soldier without Pay reckons any Service, this must be deducted from the Period of his Service—and, this is done by the Court of Inquiry under Article 82, *q. v. ante.*

Detachment Courts-Martial for Trial of Warrant Officers.

Section XIV. Article XIV. The President, it is declared, shall not be under the Degree of a Field Officer; but Section XIX., M. A. allows of a *Captain* (where a F. O. is not to be had) in the Case of a *General* Court-Martial—Clause 6, M. A. and Article 71 admits of a Captain. I, therefore,

Proposed. think the words, "or not under the Rank of Captain," should be inserted.

Oath for Courts-Martial, other than Genl. Cts.-Martial.

Section XIV. Article XVI. Not wanted, as the Oath for Genl., and other, Courts-Martial, is recommended to be the same, as in H. M.'s Army.—See *Index*.

No Commissioned Officer may be Cashiered but by Order of the Court of Directors; or by a Genl. Courts-Martial.

Section XIV. Art. XVIII. This Article requires Amendment. The new Charter (3 and 4 Wm. 4. C. 85. S. 74) gives to *His Majesty* the Power "to remove or dismiss any person holding any Office, Employment, or Commission, Civil or Military, under the said Company in India."

Officers Convicted of Behaving in a Scandalous, Infamous Manner, unbecoming the Character of an Officer and a Gentleman—to be Cashiered. (Discharged from the Service—Company's.)

Section XIV. Art. XXVI. 1.—Under the (King's) Articles 31 and 37, the Sentence is, "shall be *Cashiered*." The words in Article XXVI.—"Provided that in every Charge preferred against an Officer for such Scandalous or Unbecoming Behaviour, the Fact or Facts whereon

the same is grounded shall be clearly specified," are omitted in Article 31, there, it simply declares that, "Any Officer who shall behave in a scandalous infamous manner, unbecoming the Character of an Officer and a Gentleman;—shall (*Art.* 37,) be Cashiered."

2.—The above specification was required by former Annl. Arts. of War—It would not be sufficient to simply charge an Officer with "behaving in a scandalous, infamous manner, &c. *Capt. Simmons* states (4) if a Charge should expressly refer to this Article; a finding which negatived the imputation of *Scandal* and *Infamy*, and of conduct unbecoming the character of a *Gentleman*, must necessarily be followed by Acquittal, though the accused were guilty of conduct unbecoming the character of an *Officer*."—There has been much controversy on this point. *Mr. Samuel* (5) states "*Scandal* and *Infamy* is the essence, nay, indeed the *whole* of the Offence, and the *Facts* charged are only the *inducia* or *signs* by which it is known to the eye of the Court, and if those do not appear, but are negatived, the Offence contemplated by the Article, is negatived, and the party accused would seem entitled, *ex debito justitiæ*, to a full Acquittal."

3.—I think the words of Arts. 31 and XXVI. should run as follows: "Any Officer who shall behave in a scandalous, *or* infamous manner, unbecoming the Character of an Officer and a Gentleman; shall (Art. 37) be *Cashiered*—"*Provided that if the Officer so charged shall be acquitted of behaving in a Scandalous or Infamous Manner, but his Conduct be proved to be unbecoming the Character of an Officer or a Gentleman, or of both, such Officer shall be liable to be Cashiered.*" (6)—Hear is a Provision to meet the extreme, and the more common or ordinary, Case; the only object in leaving the extreme Case is to place it out of the Power of a Court to pass a less Sentence than "*Cashiering.*" Under a Charge of *Murder*, you may acquit; and find *Manslaughter*. **Proposed.**

4.—If the *Specification* in relation to certain Facts is not clear or sufficiently explicit, there may be an **Specification.**

(4) p. 255.
(5) 647, see P. C. M. (1825) p. 509.
(6) As in the Cases of Articles 51 to 69.

Acquittal on *such* undefined points, and still enough be left to admit of "*Cashiering*;" for if 20 such "*Scandalous*," &c. Facts be charged, and only *one* be proved, it is sufficient. The use of strong terms should never be used except in Cases wherein the proofs are most clear—for though there may be an *Honorable Acquittal* (for a bare Acquittal is only a *legal* Acquittal, (7) an Officer should not, except, in extreme Cases, have such Terms applied towards him. (8)

Penalty of False Accusations.

5.—Where a Court acquitted an Officer for want of sufficient Evidence, the Comr. in Chief would not allow the Officer's character to remain under such a doubtful Acquittal, but directed a Revision of the Proceedings, and, by his own Remaks, declared the gross improbability of the transaction imputed to him. (9)

Honorable Acquittal.

On the other hand, it is usual to declare an honorable Acquittal, whenever circumstances warrant it: and those who shall not substantiate Charges which so deeply affect another's character, have been declared, by a Comr. in Chief, to be held responsible themselves, in case of failing to prove them. (10)

(7) Case 12, p. 532, P. C. M. (1825.)

(8) In the Case of Ensn. J. P. L. (*Cumberland Regt. of Militia—J. A. G. O.*, 23*rd Decr.* 1803.) H. M. remarked that it "does not appear to H. M. that the Deft.'s misbehaviour, though extremely disorderly (by having, at the Mess of the Regt., thrown a Glass of Wine in the face of Mr. T. B. the Surgeon of the Regt.) was of a *Scandalous infamous nature*." See Case 19, p. 539, *do.*

And in Case 9, p. 528, *do.* The Marq. Hastings stated—"The Court, in declaring the immoral Act proved not to come within the description of *Scandalous and Infamous Conduct, unbecoming the Character of an Officer and Gentleman*," divested itself of all Power, to award Punishment."

(9) See Case 11, p. 530, *do.*

(10) Case 13, p. 533, *do.* The Soldier who (Art. 121 and Sect. X. Art. II.) makes a vexatious, and groundless, Appeal from a *Regtl.* to a *Genl.* Ct.-Martial, is punishable; and so is the Officer, "either Party, &c. may appeal"—and "the Person so appealing shall be punished." An Officer should be tried for any unproved Malicious Charges. Indeed Charges of *Scandalous* Conduct should not be sent before a Genl. Ct.-Ml. unless there be *positive* and clear Evidence to prove them. The Charge should be "unbecoming the Character of an Officer, *or* a Gentleman"—or "of an Officer *and* a Gentleman," as the Case may require.

Proposed.

Where Charges are proved to be malicious, vexatious, or groundless—either the Accuser should be tried; or strong Remarks be made by the Comr. in Chief. Nor should it matter whether the Accuser be a Senior or Junior Officer.

STRIKING OR ILL-TREATING A SOLDIER.

This Article should be in the Company's Articles of War—it recites—" Any Officer, or N. C. O., who shall strike, or otherwise ill-treat any Soldier, shall, if an Officer, on conviction, be liable to be " Cashiered ;" or suffer such other Punishment, according to the Nature and Degree of the Offence, as by the Judgment of a Gl. Ct.-Ml. may be awarded ;—and if a N. C. O. shall, &c. be punished, &c. by a General, District, Garrison, Regtl., or other Court-Martial." Art. 69. Proposed.

PROVOST-MARSHALS, AND THEIR ASSISTANTS.

1.—I have, under Art. 80—([1]) given the substance of this Article, and will, in this place, notice some omissions. The Article recites that " for the prompt and instant repression of all Irregularities and Crimes which may be committed by Troops in the Field and on the Line of March, Provost-Marshals shall be appointed by the Comr. in Chief, or Genl. *or other Officer* ([2]) Comg. and their Powers shall be regulated Article 101. Rules for.

([1]) Offences on Line of March—See *Index*.

([2]) These words are necessary—for though Instructions can be easily given from the Horse Guards to the Genl. Comg. an Expedition, and such a Provision is sufficient for such Cases ; it should be recollected that, as Lt. Genl. Sir W. Gordon, Q. M. Genl., stated before the Mily. Commission, 2-3rds of the British Army are stationed in the Colonies ; and certainly about 1-4th is in the *East Indies*. India is the part of the World for which detailed Directions are most required.

The Genl. Regrs. and Orders for the Army, p. 235, lay down certain Rules ; but the Orders issued, in the Peninsula, by the Duke of Wellington, are more in detail—(See P. C. Ml. and other Courts (1834) p. 49 to 61—and 235.)

A Provost-Marshal has the Rank of Captain in the Army—Assistant-Provost-Marshals that of Subaltern. Though during a Peace these Officers are not required, still Provost-Serjeants are, and would be useful at Stations in Police Duties, and should accompany each Regt., &c. of Europeans on their March ; for the present Plan of nominating a Serjeant on the March of Troops to be " Provost-Serjeant," is objectionable ; as I think the qualifications for the situation should comprise :— Provost-Serjeants for Police.

i.—A certain knowledge of the Hindoostanee Language—(to be examined before appointed !) Qualifications.

ii.—Good character and good temper.

iii.—To be able to write as well as read the English Language.

iv.—To have been a certain time in the Country; so as to have gained some knowledge of the Native Character.

At present the Serjeant appointed may be the best man in the Regt., and still deficient in qualifications Nos. I. and IV.

We will suppose the Case of a Regt. on the March—(there is a Company of Native Infantry to March with it and take the Duties of Sentries) and that a Sepoy Sentry be posted at a Village as a Safe Guard till the Baggage and Rear Guard shall have passed the Village—The Sentry calls out to the Provost-Serjeant who is passing by (for he should see up the Rearward), and the inconvenience and injury there may be to the Service, if he does not understand the Sentry is obvious!—Men may be plundering the Village, and get off before the Provost-Serjeant can know any thing of the matter.

Mounted Establishment

The Provost-Serjeant should be mounted to be useful—9 might be appointed (principally from the Dragoons, and H. A.), to be stationed as follows:—

At Dum-Dum ..	1	Brought over ..	5
Fort William ...	1	Cawnpore	1
Dinapore	1	Meerut	1
Hazareebaugh ..	1	Agra	1
Ghazeepore	1	Kurnal	1
	5	Total	9 Provost-Serjts.

Police-Troopers.

These "Provost-Serjeants" should have from 16 to 32 "Police Troopers" under them; 16 for each Corps, thus:—

At Dum-Dum	16	Brought over ..	80
Fort William ..	16	Cawnpore	32
Dinapore......	16	Meerut	32
Hazareebaugh	16	Agra	16
Ghazeepore	16	Kurnal	16
	80	Total	176 Police Troopers.

I would try the Plan at these Principal Stations first.

I am aware that there are Hurkarahs, attached to the Officers of the Qr. Mr. Genl.'s Dept., but there are only 3 Officers available for the duties in Cantonment, in the Hot Season and Rains; when it is impossible for them to be out of Cantonments to survey.

Expense.

The Expense would be nothing, and when we look at the Division and Sub-Divisions of Police in London, and when there is a Superintendent of Police in Calcutta—it is not too much to hope for a small and effecient Mily. Police—available in Cantonments, in time of Peace—and eminently useful when the Troops march at Reliefs, or on Service. Suppose each Provost-Serjt. had a Salary of 50 Rs. and each Police Trooper 12 Rs. Monthly—the extra Expense would be from 900 to 1000 Rs. a Month.

Here would be the means of 4 mounted Patrols (as in Paris) in each Cantonment—and at Cawnpore and Meerut 8 men.

To say, that Native Troopers will answer, is out of the question; they are taken by Rollster—we want *selected* and *trained* men. These men should understand the "*English language.*"

The expense would be nothing because I propose that the 9 Serjeants' places need not be filled up—except the Promotion in their room—the European Troops could spare 9 men!

according to the Usages of War and Rules of the Service ([3]) their Duties are to take charge of Prisoners confined for Offences of a General Description; *and of Prisoners of War* ([4]), &c. the rest as in the Article.

2.—To apply this Principle to the Time of Peace is a great object. It can be effected without any Expense to Govt. as an Establishment, and prove a great Saving to the State ([5]) in the shape of the Prevention of Crime. Time of Peace.

3.—It must be clear to every one, that there is great want of a Military Police in every Mily. Cantonment—of a Police regularly organized, and trained to their Duties who should become acquainted with the localities of Stations, with Soldiers and Individuals belonging to Regts. and to Bazars—and with those residing in the circumjacent Villages—and thus should

The 176 Police Troopers to be taken from the 60 Troops of Native Cavalry; Body Guard; Local Horse, &c; to keep less 176 Troopers, and devote them, more usefully, to this *new* Duty. The difference of Pay is the Extra-expense. I mention the above to show that (tho' Economy is the Order of the Day,) there is no dread, on the Score of Expense;—as to the utility of the measure, I think there can be little doubt.

The "*Thuggee Force*" employs several European Officers. Officers, in time of War, must be employed in a Mily. Police in the Field. An Asst. Provost-Marshal is attached to each Division on Service.

It is impossible to do more than give a rough Sketch of my "Mily, Police Plan" in this little work—but, I cannot refrain from making the Remark, that to place the *General Police* of a Station under the Asst. Adjt. Genl. and *that* of the Sudder Bazar under the Commissariat Officer in charge thereof; is not best calculated to effect the object of *any* kind of Police. This is not my share of the work"—is said by one—" nor is it mine," is retorted by the other.

We may recollect Sir Robt. (then Mr.) Peel when the "Home Secretary" found the Lord Mayor of London adverse to the System of "General Police Regulations," because the Custom of the City of London is peculiar!

([3]) These should be detailed under the Head of "*Provost-Marshal and Military Police.*"

([4]) Usual.

([5]) It was proved to Lord W. Bentinck that the Cultivation of the Cantonment-Lands at Kurnal would yield 1800 Rs. a year—now my "Provost-Serjeant," if he had 50 Rs. a month (and keep of Horse furnished by Govt.) say his extra Pay was 32, and the extra Pay of 16—" Police-Troopers" 3½ Rs.—and the total would be 56—Then 32 + 56 = 88 × 12 = 1056 Rs. yearly—while the 1800 Rs. give 150 Rs. Monthly. As I had some share— = in drawing up the Reply to the Circular, I may be supposed to know something of the Details.

Surveillance in Cantmts., &c.

possess a *Surveillance* to the extent of, say 2 or 3 miles ([6]) all round the Cantonment, &c.

4.—These Provost-Serjts, and Police Troopers, or a part of them, (Patrols) to move with the Troops on

Let us take the following Stations :—

		Class.			Class.
	Barrackpoor	No. 1		Bandah	No. 3
	Dum-Dum	1	20	Meerut	1
	Cuttack	2		Delhi	1
	Midnapoor	2		Allygurh	3
5	Berhampoor	2		Agra	1
	Dacca	2		Muttra	1
	Jumalpoor	3	25	Bareilly	1
	Chittagong	2		Moradabad	3
	Dinapoor	1		Shahjehanpoor	3
10	Bhagulpoor	3		Almorah	3
	Hazareebaugh	2		Kurnal	1
	Benares	1	30	Hansi	2
	Mirzapoor	3		Loodianah	2
	Gorukpoor	3		Saugor	1
15	Ghazeepoor	2		Jubbulpoor	3
	Cawnpoor	1		Nusseerabad	1
	Futtehgurh	2	35	Neemuch	1
	Mynporie	3	36	Mhow	1

Thus we have of the 1st Class.................... 15 *Stations.*
do..............2d do.................... 10
do..............3d do.................... 11

Total 36 Stations.

I will suppose the 1st Class Stations equal to 1500 Rs. a year. The 2d Class to 800 Rs. and the 3d Class equal to 400 Rs. Annl. Ground Rent :—

15 Stations — 1500 Rs. — 22,500
10 do. — 800 ,, — 8,000
11 do. — 400 ,, — 4,400

Total Annl. Ground Rent..34,900 Rs.

Rs. Yrly.

9 Provost-Serjts. differ. Pay,......32 × 9 = 288 × 12 = 3,456
176 Police Troopers do.............4 × 176 = 704 × 12 = 8,448

About 1-3rd of the Annl. Ground Rent.................. 11,904

I know that Govt. have made the Collectors resume these Cantonment Lands, or part thereof—and, certainly, equal to the value of 11,904 Rs. yearly ! If so, it would be only a re-Transfer from the Civil to the Military.

Nor, do I believe that, under *Medico* Mily. Regns. there would be any objection to their cultivation, on the score of Health ! At least there cannot be as to the portion resumed.

([6]) At Bombay, at all Mily. Stations, they have Trials of all Crimes and Offences committed by all Persons, within 2 miles of the Cantonment, &c. At Madras they try all Native Soldiers and Natives, if within a certain distance of Ft. St. George ; as they do European Soldiers, &c. under Sect. 11. Geo. 4 c. 81.

a March; to keep a Register or Diary (as at Home) of Crimes, and Persons committing them; thus they would know the Characters of the Men given to disorderly habits; and be of more use than Persons nominated for the occasion, on the spur of the moment. These Men should be appointed on report of their good Conduct and Characters, and be removed when found inefficient. They should be young and active Men. Here would open a Field for the reward of good and gallant Soldiers; and form an additional means of holding out inducements to behave well; said by the Military Commission at Home, to be so much required in the Army. Register of Crimes.

Crimes not punishable with Death or Transportation; which should be applied to the Company's, as in H. M.'s Army.

"Who shall in Operations in the Field, spread false Reports by Words or Letters;—or create unnecessary Alarm by spreading such Reports, either in the Vicinity or in the Rear of the Army;"—or, Art. 25.

"Who shall, in Action or previously to going into Action, use Words tending to create Alarm, or Despondency;"—or, Art. 26.

"Who shall, either verbally, or in writing, disclose the Numbers, Position, Magazines, or Preparations of the Army for Sieges or Movements, and by such mischievous Communications produce Effects injurious, *or calculated to be injurious* (1) to the Army and to the Service;"—or, Art. 27.

(1) These words are required. *Capt. Simmons*, p. 250, states that "without proof of the injurious effects produced by a disclosure, a charge built on this Article must fall to the ground." He thinks, as probable, that the Article originated in the Duke of Wellington's Order 10th August, 1810. (*Celorico*) See the Order at p. 68, P. C. M. and other Mily. Cts. (Hough) 1834.

It seems clear, that such communications may produce Effects in two ways—1—to give information such as to occasion the Enemy to change Position—to act contrary to a former Design; or to move his whole instead of part of his force in a projected Attack! 2—It may not produce any complete change of Design on the part of the Enemy; but it may induce him to wait for reinforcements—or partly to act differently from his original intention.

Art. 28. "Who shall leave the Ranks in order to secure Prisoners or Horses, or on Pretence of taking Wounded Officers or Men to the Rear; *(or on any other Pretence,)* without Orders from his Superior Officer;" —or,

Art. 29. "Who shall leave his Guard, Piquet or Post;—or shall be taken Prisoner by any want of due Precaution, or by Disobedience of Orders;—or fall into the Enemy's hands by passing through Out-Posts;"—or,

Art. 30. "Who shall irregularly retain, seize, or appropriate to his own Corps or Detachment, Bread, Spirits, Forage, or any Supplies proceeding to the Army, contrary to the Orders issued in that respect."

SENTENCE.—"Shall, if an Officer, on Conviction before a Genl. Ct.-Martial, be *Cashiered;* and if a N. C. O. or Soldier, shall, on Conviction before a Genl., District, or Garrison Ct.-Martial, be liable to such Punishments; *not extending to Death or Transportation,* (2) *nor to Loss of Pay, or of Pay and Pension* (3) as shall accord with the Provisions of the M. A. (4) and with the usage of the Service." (5)

Now in most Cases there may be no means of tracing how the above movements may be produced by such Communications—nor even of finding out by whom they were made—for unless the Editor of a Newspaper gave up his Author (and I see not how he could be compelled) there would be no clue.

I think the simple making such Communications should be punishable, as the breach of any order. It cannot be suspected that any British Officer would, criminally, make such Communications (which would be traitorous;) but from an improper desire to give information; which he ought not to give!

(2) The Heading to Articles as I have above given to Articles 25 to 30—is the same as at page 6, Annl. Arts. of War. The use of the words in the Sentence clearly explain that the Punishment may be *Imprisonment,* but not *Death,* or *Transportation.*

(3) Articles 38 to 59 are liable to Forfeiture as to Pension, or Pay —by Genl. or District Courts—Articles 54 to 69 only by a *Genl.* Ct. Ml. Some of the Crimes in Articles 25 to 30—are deserving of Forfeiture.

(4) The M. A. is silent on the subject.

(5) The "Usage of the Service," or "Custom of War"—is not known. The Articles are new, introduced about the year 1829.

Corporal Punishment would be the best Punishment in such Cases.

CRIMES PUNISHABLE—OFFICERS WITH CASHIERING—N. C. O. OR SOLDIERS WITH LOSS OF PAY, OR OF PAY AND PENSION, IN ADDITION TO OTHER PUNISHMENTS; BY A GENL. OR OF DISTRICT, OR GARRISON CT.-MARTIAL—SHOULD BE IN THE COMPANY'S, AS IN H. M.'s ARMY.

"Who shall by any false Statement, Certificate, or Document, or Omission of the true Statement, attempt to obtain for any Officer or Soldier, or other Person whatsoever, any Pension, Retirement, Half Pay, Gratuity, Sale of Commission, Exchange, Transfer, or Discharge;"—or, Art. 45.

"Any Officer or Soldier who shall be privy to the making of any false Entry, Alteration, or Erasure in any Account, Description Book, Attestation, Record, or Discharge, or other Document, whereby the real Services, Causes of Discharge, or Disability, Wounds, Conduct of, or Sentences of Cts.-Martial upon any Person whatsoever shall not be truly given, or who shall wilfully omit to report or record any other *Fact or Facts* relating thereto, which it was his Duty to have done in conformity with the Regns. of the Service;"—or, Art. 46.

"Who shall intentionally give in any false Return (6) or Report or Statement whatsoever of Arms, Ammunition, Clothing, Stores, or any Provisions belonging to or for the use of *H. M.'s* (7) *or the E. I. Company's Govt.*; or who shall, by any false Document, be concerned in, or connive at, any fraudulent Embezzlement (8) of the Stores aforesaid, or who shall, Art. 47.

(6) Giving in a false Return is provided for under Sect. V. Art. I. See *ante*, but it should be cancelled, and this Article used instead, as providing for more points.

(7) To provide for the Case of a Company's Officer making a false Return regarding H. M.'s Clothing, &c. See Note 8.

(8) The Section V. Article I. regards "false Returns," here (Art. 47) any "false Document" is introduced. The false Return under Section V. Art. I. only goes to the *maker* of the false Return. Article 47 includes all Persons who are *concerned* in, or *connive* at such false Return. The first part of the Article regards those making a false Return—by which there is a Deception. The second part relates to those concerned in, or conniving at, by means of a false Document, any fraudulent Embezzlement.

by producing any false Certificates, or Vouchers, or Accounts, or in any other way misapply the Public Money, for purposes other than those for which it was intended;"—or,

Art. 48. "Who shall, by any Concealment or wilful Mission, attempt to evade the true spirit and meaning of our Orders and Regns., relating to the foregoing Points."

SENTENCE.—(9) "Shall if an Officer, on Conviction before a Genl. Ct.-Martial, be *Cashiered.* If a N. C. O., or Soldier, on Conviction before a General, District, or Garrison Ct.-Ml., be liable in addition to Corporal (10) Punishment, or to Imprisonment, or to any other Punishment which the Court may be competent to award—to forfeiture of all Claim to Pension on Discharge,—and of all additional Pay whilst Serving,—and be liable to be discharged with Ignominy from our Service,—and if tried before a

EMBEZZLEMENT.—Sect. XI. Art. I. relates to *Embezzlement* by which an Officer is *Dismissed*, and under Section XLI. may be Transported, Imprisoned or Dismissed and rendered incapable of Serving in any Office, Civil or Mily. Under Clause 8, Anul. M. A. the same as under Sect. XLI. Under Art. 18, may be Transported, or Sentenced to such other Punishment as shall accord with the Provisions of the M. A. *and with the usage of the Service.*

Capt. Ford, late Pay Master H. M.'s 16th Regt. of Foot, was tried for having embezzled the sum of Company's Rs. 39,869, more or less, the Property of *Govt.* (*i. e. meaning of the E. I. Company*)—there is another Charge for Conduct unbecoming an Officer and a Gentlemam as to 6,858 Rs. more or less, which were deposited with him by Officers, N. C. O., Privates and Women of the Regt. and others. Clause 8, Annl. M. A. relates to Embezzlement of Money, &c. belonging to H. M.'s Forces or for his use.

Art. 18, states to "embezzle or misapply Monies with which he may have been entrusted for any *Military Purpose*, liable to be Transported or to such other Punishment as shall accord with the M. A. Clause 8, states to "Transportation, Fine, Imprisonment, Dismissal from H. M.'s Service and Incapacity"—Clause 8, should contain these words, after line 11—"any Money, &c. belonging to H. M.'s Forces or for his use, *or belonging to the E. I. Company, &c. when our Troops*
Proposed. *may be serving in the East Indies or with the said Company's Forces.*" As the 2nd Charge against Capt. F. was Conduct "unbecoming an Officer and a Gentleman," *Cashiering* under Art. 70, was legal, had there been 'no *Embezzlement*.'

(9) Under Art. 50.

(10) Under Clause 9 and Art. 87 allowed in the Case of sale of or making away Arms, &c. or for disgraceful Conduct, of a felonious or fraudulent Nature.

General Ct.-Ml. for any of the aforesaid Offences, shall, on proof thereof, be *(further)* ([11]) liable to *General Service*." ([12])

DRUNKENNESS, AND HABITUAL DRUNKENNESS —ON DUTY OR OFF DUTY.

1.—Drunkenness is divided into two Classes of Crime—1, Drunk—2, Drunk on, or for Duty. It is not provided for in the Company's Army except on Duty; ([1]) though, triable under Sec. XXI. Art. II. "all Disorders, &c." Art. 51.

2.—"Any Soldier, who shall have been Drunk *Four* Times within *Twelve* Months, or *Twice* Drunk when on or for Duty or Parade or on the Line of March, ([2]) as proved by reference to the *Defaulters' Book*, ([3]) or by any other satisfactory Evidence, ([3]) Four times or twice on Duty.

([11]) The word "*further* should be omitted—as it does not comport with the words— " and be liable to be *discharged* with Ignominy, being *discharged* there could be no *General Service !*

([12]) Sec. IX. allows of General Service in the case of Deserters only, and is still retained in the Company's Army—It is prohibited in H. M.'s Army (G. O. H. G. 25th Jany. 1826) though still retained in Clause 7 and Art. 50 !

([1]) Sect. xii. Art. ix. but without Forfeiture of Pay.

([2]) Under Art. 53 a *Regt.* Ct.-Martial can try the Crime.

([3]) *Capt. Simmons*, p. 299, states " In Cases of Drunkenness, the name of the N. C. O. who witnessed the Crime is entered, and the Crime inserted in *Red ink*, in order that the List may readily be referred to on trial for habitual Drunkenness, and a separate Index to the Drunken List is made." (Gen. Reg. p. 697)— " Now (p. 300) with respect to the admission of the *Defaulters' Book*, in Cases of Drunkenness, it is usual for the Adjt. to produce the Book, and an Oath to identify it and the Prisoner on Trial, &c. This cannot for a moment, be considered as legal Evidence of the fact of Drunkenness; it certainly is evidence of the Summary Convictions of that Offence by the Comg. Officer; but the Soldier is not charged with previous Convictions, nor does the Article of War under consideration, define " habitual Drunkenness" to consist in so many *previous convictions of Drunkenness*, but *in having been drunk* a certain number of times, and under certain circumstances. The question is not, how far it may be desirable, on Courts-Martial, to examine witnesses *not on oath*, &c.; but the question is, as the Statute requires that Witnesses before Courts-Martial shall be examined on oath, can a Court-Martial admit as proof of a fact, declaration not on oath and not made before any judicature whatever? To establish *habitual Drunkenness* and to apply the forfeiture of *Pay; this Proof is*

shall, in all Cases, be deprived (*on Conviction*,) of his Liquor when issued in kind, or of his Allowance in lieu of Beer or Liquor, (4) or of *one* Penny a day of his Pay, for any period not less than *six* months, and not exceeding *two* years, for habitual Drunkenness ;—and in addition to any such Punishment the Court may (if it shall think fit,) Sentence such Offender to any other (5) Punishment which the Court may be competent to award."

2d Conviction. 3.—" Any Soldier who, at any time within *six* months after a Conviction for habitual Drunkenness, shall be drunk *twice*, or shall be *once* drunk when for Duty or Parade or on the Line of March, shall, on proof thereof, be again convicted of habitual Drunkenness, and shall, over and above any former Forfeiture or Forfeitures of his Liquor when issued in kind, or of his Beer or Liquor Money, or of Pay, be further deprived of *one* Penny a day of his Pay for any period not less than *six* months, and not exceeding *two* years ;—and in addition to such Punishment the Court may Sentence such Offender to any other Punishment (6) which the Court may be competent to award."

Not more than three Pence. 4.—" But in no Case shall any Soldier by reason of being Drunk on or for Duty or Parade or on the Line of March, or by reason of habitual Drunkenness, be at any one time placed under Forfeitures (whether of Beer or Liquor Money, or of Pay, or of both,) exceeding

sufficient, because H. M. has been pleased to declare it so, and with him rests the appropriation of Pay to his Army.

Remarks.—Article 51 declares "as proved by reference to the *Defaulters' Book or by any other satisfactory Evidence*," so that the N. C. O. who saw him drunk, could swear to the fact; if a Court doubt, they may examine the above Serjeant or any persons, who saw the Soldier drunk. I never heard any objection made before. It is rather an *unmilitary law* objection. But if there are many men drunk in a month (perhaps 200,) it would be troublesome to adopt any other mode than by entries in the Defaulters' Book.

(4) At Half Batta Stations *one* Dram; and two at Full Batta Stations.

(5) May to "*Corporal* Punishment" under G. O. H. G. 24th Aug. 1833, for Drunkenness on duty. No restriction in the Company's (European) Army.

(6) See Note 5.

in the whole amount of *Three Pence per Diem*: (7) such Soldier, nevertheless, being again convicted of being Drunk on, or for Duty, or Parade, or on the Line of March, or of habitual Drunkenness, may be Sentenced to any other (8) Punishment which the Court is competent to award."

5.—"Any Soldier who shall be drunk when on, or for Duty, or Parade, or on the Line of March, may, on Conviction thereof by a *Regtl.* or other Court-Martial, be Sentenced to be deprived of a Penny a day of his Pay for any period not exceeding *thirty* days, in addition to any other (9) Punishment which such Court shall award." Art. 53 Line of March.

6.—I think the wording of Article 51 should be thus—"But in no Case shall any Soldier, by reason of being drunk on, or for Duty, or Parade, or on the Line of March, or by reason of habitual Drunkenness, be at any time placed under Forfeiture (whether of Beer, or Liquor Money, or of Pay, or of both,) *by which his Pay shall be reduced below Ten Pence per* Proposed.

(7) An old well informed and very intelligent Officer in H. M.'s Service, who was for many years an Adjt. of a distinguished Regt. now in India, wrote me as follows—"The issue of Spirits as a part of the Soldiers' Rations ceased about 2 years back (1832) in all our Colonies, and the Soldier in lieu of it receives *one* Penny a day. My construction of the Article (51) is, that no Soldier is to have more than *two* Pence a day stopped from his pay in addition to his allowance for Liquor, because a Soldier cannot live, and find himself in necessaries on less than *ten* Pence a day, which is what he would receive after a *third* conviction for habitual Drunkenness in any of our Colonies or in England, and would also be exactly the Sum he would receive here, (*India*) after the loss of his compensation for Liquor and *two* Pence a day from his regular pay; the difference lies in the Soldier being allowed in the *Upper Provinces (Bengal)* above *three* pence a day in lieu of Liquor, while he receives in all our Colonies only *one* Penny a day in lieu of the same—I have no doubt that what I have stated is the *spirit*, and meaning, of the Article. I think it is probable the *three* Pence has been introduced from some Person having caused them to be tried for a *fourth* offence and thereby reduced the Soldier's pay to *nine* Pence a day; which is less than he can live upon, and find himself with necessaries; and you may observe that in the Arts. of War for 1833, there is a Clause allowing men to be tried a *fourth* time, which is not in the Articles for 1832. It would be well to refer the Matter to the Comr. in Chief, in order that he might bring it to the notice of the Home Authorities, for alteration in the wording of the Article; and to set the matter at rest."

(8) See Note 5.

(9) See Note 5.

Diem: ([10]) such Soldier, nevertheless, being again convicted of being Drunk on, or for Duty, or Parade, or on the Line of March, or of habitual Drunkenness, may be Sentenced *to Forfeiture on the expiration of any Forfeiture under any former Sentence; to be reckoned and take effect from and after such Expiration*, &c. ([11]) *or* to any other ([12]) Punishment which the Court is competent to award." I think the above Plan will remove all doubt. If a Soldier cannot be subsisted *in India* under *Ten* Pence a day—it seems proper to use the proposed words—if he can be subsisted for a less sum elsewhere—then, detail the exceptions.([13])

NOTICE AND REWARD OF GOOD AND BAD CHARACTERS..

The Article to the above effect should be applied to the Company's Army—The words are as follows :—

Art. 83. "The Names of (*N. C. O.*) or Soldiers of any Regt. or Corps who have received (our) special Approbation for Meritorious Conduct, or who have

([10]) Instead of the words "exceeding in the whole of the Amount of *three Pence* per diem."

([11]) "It is directed that Stoppages shall be made after the Sentence of Imprisonment (if any) has expired—there is no means till then. See G. O. C. C. (King's 13th) 16th May, 1836. The Stoppages in lieu of Liquor to commence on the expiration of his Imprisonment." (*Caffrey's* Case). Imprisonment (See Index—Miscellaneous,) for a second Offence, takes place from the expiration of the former Sentence.

([12]) See Note 5.

([13]) I have heard many King's Officers say—"in any thing they do at Home regarding the Troops, they never think of India!"

Of course while in Hospital Soldiers get Wine, &c. if recommended by the Surgeon. But what is to be done in the Case of Soldiers directed to march with their Regt. such Period of March being part of a Sentence of Imprisonment—see Case of Patrick Nolen, John Thos. Cockshaw, John Owen and John Casey, 3d Foot, (*Buffs*) Sentenced to *Solitary Imprisonment*, 10, 6 and 4 months, the Comr. in Chief directed—"The Prisoners (named) will march, as such, with their Regt.; and undergo the unexpired portion of their Imprisonment on the arrival of the Corps at the Station to which it is destined." (Tried at *Ghazeepoor* and marched to *Meerut!*) G. O. C. C (King's 2d)—7th Nov. 1835.

Can a Soldier march on *Bread and Water?*

On Service, Men could not be allowed to be kept in Solitary Confinement—Corporal Punishment would be better.

received a Donation of Money in addition to their Pension on Discharge, shall be notified to the Parishes to which they may belong, by *the* (our) Secretary (at War) *to Govt. Mily. Dept.*—and on the other hand, the Names of Soldiers who have been dismissed with disgrace, or who have forfeited their Pension owing to Misconduct, shall be equally notified to the Parishes to which they belong;—such Notification being affixed on the outside of the Door of the Church or Chapel on the Sunday next succeeding the Receipt of the Notification."

CRIMES WHICH THOUGH TRIABLE BY A SUPERIOR, MAY, IN CERTAIN CASES, BE TRIED BY INFERIOR COURTS-MARTIAL.

1.—This Article (which should be in the Company's Articles of War) recites—" No Comg. Officer shall, by giving in against a Prisoner vague and indefinite Charges, try before a *Regtl.* Ct.-Ml. grave Offences, which are directed to be tried by *Genl.*, *District*, or *Garrison* Courts-Martial; but whereas it may be advisable that some of the foregoing Offences, which in certain Cases may admit of less serious notice, should be tried by *District*, *Garrison*, or *Regtl.* Cts.-Ml.; in such cases the Officer Comg. the Battn., or Corps, or Detachment, who may deem it advisable so to proceed, shall lay a statement of the Case, (1) together with the Charge he intends to bring, before the Genl., or other Officer Comg. the Brigade, District, or Garrison, with an application so to proceed." Art. 85.

2.—" The Genl. or Superior Officer will exercise his Discretion in directing the Description of the Court by which the Offender shall be tried, except for Offences committed on the Line of March, when the Officer in Command of the Troops (shall) *is* (2) authorized to try Discretion of Genl. Officers.

(1) With the Court of Inquiry (if held and as is usual); and Extracts from the Defaulters' and Character Books.

(2) By Art. 80 for Mutiny or gross Insubordination or other Offences —and for Drunkenness by Art. 53.

any *N. C. O. or* Soldier by a *Regtl.* Ct.-Ml., confirming *or approving* and executing the Sentence; and in all Cases of Mutiny or gross Insubordination *or other Offences,* carrying it into execution on the spot;— Provided that the Sentence shall in no Case exceed that which a Regtl. Court is competent to award;— but the Permission of the General Officer to try an Offender by a *District or Regtl.* Court-Martial, and any Sentences confirmed by the Comg. Officer on the Line of March, shall be reported to the General *or Superior* Officer, and be noticed in the Monthly Return of Courts-Martial sent to the Adjt. Genl." (3)

Pensions to Soldiers, Discharge of Men of Good and Bad Characters proposed.

Art. 87. (4) "In order to secure to the deserving Soldier, when discharged, a Provision proportioned to the length and nature of his Service, it is hereby directed, that no Soldier shall be discharged for any other cause except Unfitness, for which Provision is already made, (5) unless his Services, Conduct, Character, and the cause of the Discharge be ascertained before a Regtl. Board, (6) to be held for the purpose of verify-

Regimental. Board.

(3) See title *General* Ct.-Ml. G. O. C. C. 26th Oct. 1835, and *Crimes*—under *Miscellaneous* matter—*Index.*

(4) Modified "verbally" to answer for the E. I. "Company's Service."

(5) See Regns. as to Annl. Invaliding.

(6) The G. O. H. G. 20th June, 1836, takes a comprehensive view of the subject of Discharges. It states that "Lord Hill finds it expedient to revise and extend the benefits of the Regns. under which the Soldier of good Character is indulged with permission to purchase his Discharge, upon the recommendation of his Comg. Officer.

"His Lordship is convinced that the popularity of the Mily. Service generally, and the success of the recruiting Service, cannot fail to be greatly increased by granting that indulgence to as liberal an extent as may be consistent with the due Efficiency of the Army.

"Lord H. earnestly recommends to Comg. Officers of Regts. not to refuse their support to any application for discharge for the regulated Compensation, in which the Applicant's conduct shall be unexceptionable.

"The want of a moderate number of men to complete a Regt. ought not, in itself, to disappoint a deserving Soldier of his Discharge; there

ing and recording all these necessary particulars in the Discharge, on which Document the Decision of Govt. on the N. C. O. or Soldier's Claim will be made. The Board shall be composed of *Three* Officers;—the Major, or 2d in Command, shall be the President;—Two Captains, *or Lieuts. of not less than eight years as Commissioned Officers*, shall be Members;—and all Military Persons who may be summoned by the

being no difficulty in obtaining Recruits even at the present low rate of Bounty. (*An exception in the Case of Regts. embarking for active Service.*)

• "Although the Regn. in question was framed to reward the good and efficient Soldier only; yet experience has proved that the Army derives great advantage from the *occasional discharge of*, for the regulated Compensation, of men of *indifferent Character*, and whose habits may have rendered them permanently inefficient, as well as of men who have been too long in a state of Desertion to be again fit for the Ranks.

"All Cases of the above nature to be specially submitted by Comg. Officers for Lord H.'s decision; and his Lordship expects that he shall frequently have it in his Power to disencumber Regts. of men of this description without prejudice to Discipline, &c.

"By Comd., &c. (Signed) J. MACDONALD, *A. G.*"

Remarks—In H. M.'s Army the Soldier can purchase his Discharge for 20£—In the Company's Army 80£ is the Sum. In the latter Sum a large portion is in the form of the expense of the Voyage, &c. and in the former Case the 20£ must be *exclusive* of the Cost on the Voyage of a Recruit in H. M.'s Service who comes to India—but then the King's Soldier if he returns to England, must pay the passage home—work it out,—or become a Servant, &c.

In looking at the above Order it will be seen, that more facility in obtaining Discharges is considered to be a popular measure. I will place it in 2 points of view;—1—*As to the Soldier of good Character.* It would be very desirable if men who had served say 10 years, in the Company's Service, in India—could be allowed to take their Discharge, upon the payment of 20£: it would be a great Boon. The *Sappers and Miners* must pay 100£. (Ct. Drs. Lr. to Ft. St. George Govt. 9th March 1836.) If he goes home he is to provide his means of returning. If he had employment in India—the bare 20£ should be the Sum to be paid. The good and prudent Soldier could save 200 Rs. while 800 Rs. he would not be able to raise. He might save even borrow the one but not the other Sum. This plan would be a great encouragement to *good behaviour*, and induce as Lord H. states—the "*success of the Recruiting Service*" as well as "*the Popularity of the Mily. Service!!*"

There might be, at first, one man in every 100 of good men yearly. Suppose 20 men yearly, were to be discharged—the difference between 80 and 20£ = 60 + 20 = 1200£!!! If these men staid in India they could employ themselves in some line of business. If they chose to return to England, &c. they must pay for, or work, their Passage. Let it be a Proviso that a man is not only to be recommended by his Comg. Officer, but duly passed by the Board. Let it

President thereof are directed to attend to give Information to the Board on the subject of their Inquiry; —such Board is not competent to award any Punishment or Forfeiture of Service; their Duty being restricted to the faithful and impartial Record of the Soldier's Services and Conduct at the close of his Military Career;—and they will be governed, in this Duty by a Reference to the Rules, Orders, and Regns. (7) for the pensioning of Soldiers; which Regns. shall be produced before the Board, whenever it is assembled;

be borne in mind, that the Period does not entitle to Pension—that the Soldier so discharged will not be a burden to the Invalid Establishment. My Note Book informs me (as per G. O.) that in the years 1824 to 1833 (10 *years*) 1313 or 131 men, yearly average, from the Arty. and Eur. Regt. (*Bengal*) were sent *to Europe*—and 1659 or 165 yearly *were withdrwan from the above Corps!!!* 296 out of 4417 or 1 in 15!!! so it will be found that the Loss of 1200£ is greatly reducible.

The new Charter (3 *and* 4 *Wm.* 4. *c.* 85 *s.* 81 *to* 87) has opened a wide Field for the Cases of such persons. There is no doubt that in the Mountainous Tracts, *Simla, &c.* employment could be found —such as farming—and Brewing Beer, &c. for the Soldiers on an extensive Scale, to do away with the use of Spirits. There are, the Islands of *Singapoor*, &c. and many other Places with means of employment; but I cannot in this place enter into detail. Such Discharges would prove Prizes of no small value—and, if we wish to improve the Soldier's Condition there is one method.

In Cases of great gallantry a Service of 7 years should entitle to a free Discharge.

2.—*As to Men of bad Character*—The new Regns. direct Comg. Officers of Regts. to make a special Report on these Cases, to be decided upon—by Lord Hill.

I think it is plain that the Discharge of a knot of the very worst men, even without any compensation for their Discharge, would be a good Mily. measure; and a State benefit!

These Characters concentrate in their persons, all the Crimes of serious magnitude.

Suppose in the 10 King's Regts. in Bengal, 20 Men of very bad Characters were discharged Yearly—the result would be, that there would be the saving of the expense of Transporting many men—17 men from the King's and Company's Troops were transported of those *tried* in 1834!—and of imprisoning 20 or 30 other men—to be deducted from the Expense of replacing the Discharged men, and those who from Crime to Crime, follow the same course of Imprisonments and then transported!!!

3.—It becomes a question, whether 1000£ say, yearly laid out in ridding the Service of bad Characters, would not be a real and total Saving of even the above Sum—by less crime. Let the *Abolitionists* test this—they must not look at the Expense. These men should *not* remain in the Country—let them go to the "*Place from whence they came.*"

(7) To be framed.

—when the Board is assembled by order of the Comg. Officer or other Superior Authority, the Members, and *afterwards the President*, shall make the following Declaration in the Presence of the Soldier whose Case is under Inquiry."

DECLARATION.—" I, A. B., do declare, upon my Honor, that I will duly and impartially inquire into the *Matter or* Matters to be brought before this Board, according to the Rules, *Orders*, and Regns. of the Service; and if any Doubt shall arise, according to my conscience; the best of my understanding, and the Custom of the Service in the like Cases."

PENSIONS TO WOUNDED OFFICERS.

(1) " For the purpose of securing a Provision for Life to Officers of the Army of the E. I. Company who have sustained serious and permanent Injury by Wounds received in Action with an Enemy, according to the Rules and Regns. for granting Pensions to Wounded Officers,—it is hereby directed, that when the state of the Officer's Wound shall be such as require him to be inspected by a Mily. Medical Board convened by Order of the Comr. in Chief through the Secy. to Govt. Mily. Dept.—such Board shall be composed of *Five*, and in no Case of less than *Three* Medical Officers of the Rank of a Regtl. Surgeon, *and not under that of an Asst. Surgeon of* 8 *years standing*, —the President whereof shall be a Suptg. or Officiating Suptg. Surgeon, or Senior Surgeon at the Station: (2)—the Proceedings of the Board in the Inspection of Wounded Officers, shall be conducted as follows:—the Senior Medical Officer, as President, shall require each Member to make, and afterwards shall himself make, the following Declaration in Presence of the Officer whose Case is under Inquiry:— Art. 88. For Life. Medl. Board.

DECLARATION.—" I, A. B., do declare, upon my Honor, that I will duly and impartially inquire into and give my Opinion on the Case of the Officer

(1) Modified verbally, to apply to the Company's Service.

(2) See G. O. C. C. 22d. Nov. 1834.

now before this Board—according to the true Spirit and Meaning of the Orders, and Regns., and the Instructions issued on this Head. And further, that I will not, at any time, disclose my own (3) Vote or Opinion, *nor that of the President*, nor of any Member of the Board, unless required to do so by competent Authority.

REPORT.—"These Boards shall report their Proceedings to the Medical Board, by whom a Report shall be made to the Comr. in Chief and by the Comr. in Chief to the Secy. to Govt. Mily. Dept. for the Decision of Govt." (4)

MEMBERS OF COURTS-MARTIAL TO BEHAVE WITH DECENCY—VOTES HOW TAKEN.

Art. 94. Proposed.

1.—Section XIV. Art. V. (Company's) only provides for the two first and three last lines of Art. 94.

(3) This is more explanatory than the "*Oath*" of Members of Gl. Cts. Ml.—See p. 96, *Schedule* M. A. (Ann. ?) The word "*my own*," I have elsewhere recommended to be used—See *Index*.

(4) Art. 88—state for "*our Decision*"—i. e. H. M.'s—The Court of Directors to have a final Decision, of course; but, tho' I am aware that it has been the practice in H. M.'s Service to examine Officers Yearly, or Periodically as the Case may require (Officers being at Home or Abroad)—still, there must be a distinction between Cases of Officers who have retired from the Service on such Pensions for Wounds; and those who remain in the Service; and always excepting Cases of the *loss of limbs*, which are positive Losses—But in the Case of Wounds it must be recollected, that a Wound which in H. M.'s Army may incapacitate an Officer from Service in Warm Climate (*India*,) &c. a *King's* Officer may exchange into a Regt. on *Home* Service; such will operate differently with regard to a *Company's* Officer. If a Company's Officer were to be passed by a Board in *India* in such a Case, the effect of such Wound might, at *Home*, appear to be of a different Complexion. A Medical friend of mine told me of an *Anecdote* regarding a King's Officer sent Home sick from *Madras*. The Chief Medical Authority *there* received a letter from the Chief Medical Staff at *Home*, desiring to know *why* he had sent Home ——————; the Reply given was—"If I had not sent him Home, he would have gone to his *long Home!* and would not have lived to see you—the Voyage did him benefit. I saw his real and dangerous state of Health. Had he remained in India he must have died !"

Tho' it be treading on dangerous ground, I cannot but remark, that it is not sufficient to become well—but to remain so long enough to secure the Recovery of Health. And all Medical men of Experience know, that a sojourn at *Simla*, or other Mountainous Tracts for the hot and rainy Seasons only will not do—a year, and sometimes two years are necessary to re-establish Health ! ! !

This latter Article provides that—" All the Members of a Court-Martial are to behave with Decency;—to take their Seats according to Rank *on the right and left of the President* ([1]) and not to quit them without Permission of the President;—who will clear the Court on any Discussion; ([2])—and in Case of intemperate words used by any Member of the Court, direct the same to be taken down in writing *by the J. A.* ([3]), and reported *by the President* ([4]) to the Officer ordering the Court-Martial to assemble;—no reproachful words are to be used to witnesses or prisoners;—and the President is hereby held responsible that every Person attending such Court be treated with proper respect;—and in taking the Votes of the Court, the President, *or Judge Advocate at General Cts.-Martial* ([5]) shall begin (by) with that of the youngest Member," *and when all the Members shall have voted; the President shall give his Vote.* Votes.

([1]) It is usual for the President to sit in the Centre of the Table on one side, and the J. A. opposite to him on the other. The President sitting at the End of the Table is inconvenient, as the Members at the other End cannot hear what is said. The J. A. does, sometimes, sit on the President's left; but the former is the best position. The words in "*Italics*," proposed.

([2]) There is an object to prevent any Discussion being heard, not with the view to secrecy as to the purport of such Discussion—but that the opinion of any Member may not be known. On Lt. Genl. Whitelock's Trial, as to the admission of a question proposed to be put, a discussion took place in open Court and (as reported by Mr. Gurney) Lt. Genl. (the late) Sir J. Moore said he thought it should not be put. The Court was cleared—when re-opened the Genl. was told by the J. A. G. that "the Court were *unanimously* of opinion that the question should be put." The Genl. remarked on the fact in his Defence, that when he left the Court *one* Member thought otherwise—see printed Trial, p. 685. It is clear that Genl. W. knew that one Member was in his favor, and by such a disclosure, also, knew that the Votes of the other Members were against him.

([3]) This should be done by the J. A. as the Recording Officer of the Court.

([4]) This should be done by the President; as he is the proper person.

([5]) It is only about 5 or 6 years since this change took place; ordering the President, instead of the J. A., to take the Votes of the Court. The Article applies to all Courts-Martial, and as there is only a J. A. at *Genl.* Cts.-Ml. the direction seems to have been made inadvertently. The old Articles never stated who was to take the Votes. In the case of the trial of a *King's* Officer or Soldier the *President* takes the Votes; on the trial of a *Company's* Officer or Soldier, the J. A. takes them!—I therefore proposed to insert the words above recited.

2.—The words in *Italics* clearly point out the persons who are to perform the Duties assigned—and the Article so modified, shall be used in the Company's Code.

Crying down Credit.

Art. III. 1.—There is nothing which so much needs Legislation as the subject of Debts which Soldiers may contract—as there is nothing which operates so injuriously on the *Morale* of the Army as a System of unlimited Credit to Men, many of whom enlist to run away from Creditors, and thus have a predisposition for Extravagance—who have so little control over themselves—who are so likely to be the Dupes of the usurious Trader and Shopkeeper; that some check by Legislative Enactment is urgently called for.

Unlimited Credit—bad.

2.—The Laws of England did levy a Tax, through the medium of "*Sumptuary Laws!*" on the *rich.* The System of unlimited Credit levies a much severer Tax on the poor Soldier! From the Soldier's Pay there are deductions for his Messing, Washing, &c. and the "*Balance,*" as it is termed, left is small ([6]), and it is obvious that if he contracts Debts beyond a Sum which can by such a "*Balance*" be liquidated, he must be involved! Now, while the 111th Article

Deductions from Pay.

([6]) A man of 14 years' Service and upwards receives as follows:

Deductions from Pay.

Dr.	R.	A.	P.	Cr.	(Out of Hospital.) R.	A.	P.
Monthly Mess Money,..	2	1	0	30 Days Pr, ...	10	8	0
Cooking,.............	0	12	0	Do. Liquor Allowance,	1	9	0
Washing,.............	0	8	0		—	—	—
Shaving,.............	0	4	0	Total, ...	12	1	0
Pipe Clay,...........	0	0	5	Deductions, ...	3	9	5
	—	—	—		—	—	—
Deductions, ...	3	9	5	*Balance*, ...	8	7	7
Do. In Hospital 30 Days Pay,........................					10	8	0
Deduct, Do. Stoppages Do.,..........................					3	12	0
					—	—	—
Balance, ...					6	12	0

declares that "if the Landlords or other Inhabitants suffer the Soldiers to contract Debts, *such* Debts will not be discharged," which *such* Debts are further declared to be "such Debts as shall have been contracted by the Soldiers, under his (Comg. Officer's) Command *beyond* the Amount of their *daily subsistence*" —Clause 3 of the M. A. declares that no Soldier shall be arrested for any Debt under 30£ (7), so that though

	(Out of Hospital.)		
Under 7 years Service 30 Days Pay,.............	8	8	0
Liquor Money do.	1	9	0
	10	1	0
Deductions as above, ...	3	9	5
Balance,..............	6	7	7
Do. in Hospital 30 Days Pay,..................	8	8	0
Deduct do. Stoppages do........................	3	12	0
Balance,..............	4	12	0

Further Deductions.—1.—A Man in *Solitary Confinement* forfeits the whole of his Pay, Spirit-Allowance, Clothing, or Compensation, and Service.

2.—A Man in the *Guard Room* previous to Trial (*if convicted*) and before placed in the Cells, or to receiving Corporal Punishment, forfeits the whole of his Pay, and Spirit-Allowance, on those Days; except 4 Anas allowed for Subsistence, including his Rations, also Clothing or Compensation in lieu.

3.—A Man in *Congee House* for 48 hours or upwards, only forfeits his Ration and Spirit-Allowance, and Govt. grants 1 A. 8 P. per Diem in lieu of his Rations, for the purpose of supplying Bread and Water, and he is then a gainer of 8 Pie a day, being the difference between his Grog-Money, Messing, and Cooking, &c.

4.—A Man in *Guard House* 24 hours, forfeits his Spirit-Money for one day—48 hours 2 days—and so on for every 24 hours he is in the Guard Room. His Grog-Money is 10 Pie a day.

The Pay of a Soldier is as follows :—

	£.	s.	d.	R.	A.	P.	
Of 14 Years, and upwards	..	..	10½	10	8	..	For a Month of 30 Days.
7 do..................	..	..	9½	9	8	..	
7 do and under........	..	..	8½	8	8	..	

The *Liquor Allowance* not included. See above only the *King's* Net-Pay. At *Half* Batta Stations he receives Liquor Money for *one*, and at the *Full* Batta Stations, for *two* Drams.

(7) Recently 20£.

he cannot be arrested till the Debt amounts to 30£, he might contract several Debts to such an Amount, and be lost to the Service—he can, in the end be arrested: so that Article 111 is a mere nullity!

Courts of Requests.

3.—The peculiar situation of the European Soldier in *India* has not been provided for,—for the Mily. Courts of Requests, under 4 Geo. 4, c. 81, s. 57 (*Company's*), can take Cognizance of Debts to the amount of 400 Sa. Rs. (8) so that the effect of Clause 3, if it were meant to check extravagance in the Soldier, is useless. To say "you shall not Arrest the Soldier for any Debt under 30£," is no Security against the incurring small Debts; though not being liable to Arrest for any Debt under 30£ will still induce extravagance. The non-liability to Arrest under Clause 3—for less than 30£, becomes in India, nugatory, for the *Mily.* Court of Requests, by taking Cognizance of Debts from 1 to 400 Rs. gives the Creditor the right of Action in the *Mily.* Courts of Requests, which he is by the Legislature debarred from in the *Civil* Courts except as to 30£ in England, and above 40£ in India! and this, while the 111th Article of War directs Comg. Officers to "*cry down Credit*"—for what purpose? of course to prevent the incurring Debts! Now, is it not most clear, that the above Article is inoperative. The Debts *there* alluded to are not "beyond the amount of their daily Subsistence." It will be seen by Note 6 above, that the "*Balance*" of Pay of a Soldier of 14 years' Service and upwards, is about 16s., and of Soldiers of 7 and under 7 years' Service, about 12 or 13s. a month! This too if no Deductions are made from such Balance! How, then, can those legislating for the Army, first allow the Soldier to be free from Arrest for Debts under 30£, and then sanction a Mily. Court of Requests (9) to take Cognizance of Debts of from 1 to 400 Rs.

Minors.

4.—The Law protects "Minors" from being involved in Debt, by rendering Debts contracted, while

(8) Nearly 40£.

(9) 4 Geo. 4, c. 81, s. 57. The Soldier is not at Home, amenable to a Court of Requests.

under age, not recoverable! The Law supposes want of knowledge of the world—of a capacity to exercise a proper judgment—is not the young, inexperienced, Soldier—indeed, all Soldiers, entitled to consideration. Many are imposed on—I fear Articles are sold to Soldiers at 20 and 25 per cent. advance on Credit; so that the Soldier buys at a great disadvantage. ([10]) This is known to be the Case.

5.—Supposing the Case of a good Soldier little is to be feared, but there are always Men of bad Character, and of extravagant Habits; and, in India, many more than in England, &c.—I will instance a Case. There is one King's Regt. in India without any Men of *above* 7 years' Service. Suppose a Soldier, as in Note 6, to be in Hospital the whole month—his Monthly Balance will be Rs. 4-12-0, or 9s. 6d. If he has lost his Regtl. Necessaries, he is supplied with a new *kit* by his Captain. We see the "*Balance*" is about 9s. 6d.—he may be under Stoppages to his Captain for 3 or 4 months! Now, if he has incurred a Debt of 40 or 50s. —when can he pay such a Debt! If Sick.

6.—The Captain, be it recollected, cannot re-imburse himself if the Soldier dies, for the Articles of Necessaries furnished—and if the Captain gets the Command from another Captain, the last Captain can only get a certain portion of any Debts due ([11])—We thus see, that the Parties for whom protection is required are *three*—*1st.* The Govt. cannot be well served by a Soldier whose debts demoralize his character—render him liable to be "taken out of the Service" —or unfit for his duties, by means of intemperance and extravagance. *2nd.* The Captain has a right to expect Security as to the payment of Debts due to him for the occasional *(often frequent)* Supply of Regimental Necessaries—It is well known that no Captain, though the Soldier be in debt to him, will allow a *Vagabond* Loss of Capt.

([10]) Money, even, is at times, advanced at the rate of 8, to pay 10 Rs. in 2 Months. The Soldier gives his I. O. U. for 10 Rs. and if he goes to the Court of Requests the Creditor gets his 10 Rs. Inquiries should always be made as to those and similar transactions!!!

([11]) The Captain who receives charge of the Company, is not answerable for Debts above 10*s*.

to be without Regtl. Necessaries—so that, in fact he always furnishes a fresh supply—If the Man die, or is Transported the Captain loses. 3rd. The Soldier, himself, ought not to be suffered to incur debts which he cannot pay under a long period ([12])—now, the only Party protected is the *Creditor*—and why protect one Party and leave the other *three* parties unprotected! Would it not do a service to the honest Tradesman—to declare that if Credit be given to any Soldier, such Debts shall not be recovered in any Court, or Court of Requests, *Civil* or *Military!* After due Proclamation made, consequent on such an Enactment, ([13]) there could be nothing unfair to the Shopkeepers.

7.—There is hardly a Subject which demands more seriously the consideration of the Legislature—no half measures will do, the evil must be eradicated. I propose that the Article in question should be remodelled ([14]) thus:

Art. III. Proposed. "The Comg. Officer of every Corps, *Detachment or Party*, shall, upon its first coming to any Place where they are to remain in Quarters, *or shall stay during the Day*—cause public Proclamation to be made, ([15]) that if the Landlords, ([16]) *Shopkeepers*, or other Inhabitants suffer the Soldiers to contract Debts, such Debts will not be discharged;—the said Comg. Officer refusing or neglecting so to do shall be suspended for *three months*,—[during which Time his whole Pay shall be applied to the Discharging of such Debts as shall have been contracted by the Soldiers under his Command beyond the amount of their daily Subsistence. If there be any Overplus remaining it may be returned to him.]

([12]) If a Soldier whose "*Balance*" is 13*s*. a Month, gets in Debt 5£, it will require 7 or 8 Months to pay the Debt; and in many Cases, may take 12 or more Months.

([13]) Let it be stuck up at each Barrack-gate, and oblige each Shopkeeper to stick it up in his Shop—and, on proof of any infraction of the Law, let the Shopkeeper be liable to a Fine of 10 Times the Debt! See Article (Annl.) 65.

([14]) The words in "*Italics*" are proposed. Those between [" Brackets"] to be omitted.

([15]) Writing to Magistrates, and giving Notice in Towns and Villages near the Cantonment. See Note 13.

([16]) Applies to England, &c.

If after public Proclamation made as above directed, *Landlords, Shopkeepers, or* the Inhabitants shall notwithstanding suffer the Soldiers to contract Debts, it will be at their own Peril, the Officers not being obliged to discharge such Debts"—" *Provided also, that no N. C. O. or Soldier shall be liable to Arrest for any Debt contracted subseqent to his Inlistment* ([17]) *nor to any Action of Debt in any Court of Requests, Civil or Military;—Provided, that any Debts to the Amount* of 40 Shillings ([18]) *shall be decided by a Regtl. Court of Requests.*" ([19]) *See para.* 12.

8.—There should be added to Clause 3, M. A. these Words—" Provided that when any of Our Troops shall be serving in the *East Indies* no such Person shall be arrested for any Debt unless the same shall exceed the sum of 40£" *if there is to be Arrest!* ([20])—For though the 57th Section 4 *Geo.* 4, *c.* 81 is in force, still an act made subsequently, should not be framed so as to be in any respect repugnant to an older Act ([21]) not repeal. Proposed, Clause 3, M. A. 4 Geo. 4, c. 81, s. 57.

9.—A Question has arisen (in Bengal) as to whether the 111th Article of War did not take away the Liability of H. M.'s Soldiers to the *Mily.* Courts of Requests under Section 57 of 4 Geo. 4, c. 81.—On a reference to the present Comr. in Chief it was decided in the *Negative.* ([22])

([17]) And not for Debts of 30£. I would rather say not under 100£, to make Arrest more difficult.

([18]) Debts to the Value of 40*s.* were the usual amount. But, now, in London, 5£ (30 and 40 Geo. 3, c. 104.)

([19]) This is as much Protection as I would give the Creditor. This Article (111) should be a Clause of the M. A. and Clause 3, and 4 Geo. 4, c. 81, *s.* 57, should be repealed, in as far as N. C. O. or Soldiers are concerned. Section 56 alludes to "*honest* creditors" and "*just* Debts." I fear many could not claim under those terms.

([20]) About 400 Sa. Rs. under 4 Geo. 4, *c.* 18, *s.* 57.

([21]) Of 1823.

([22]) " The Comg. Officers of Companies cannot be called on to enforce Awards of such Courts beyond the Amount of such " *Balances*" (*See Note* 6,) as may be due to Soldiers after payment of Regtl. Necessaries, &c. It was stated, also, that there could be no prospect of payment by " *Execution generally*" of the Soldier's Property, and that the *Evil would work its own cure;* i. e. people would no longer trust Soldiers from whom they could not secure payment. Lr. No. 2191, A. G. 28th Novr. 1835.

Section 57, 4 Geo. 4, c. 81, the Antagonist of Art. 111.

10.—The 111th Article directs the "crying down of credit" ([23]), still its *Antagonist* Section 57 (4 *Geo.* 4, *c.* 81) admits of the Cognizance of Debts not exceeding 400 Sa. Rs. I know that all the old Regtl. Officers in H. M.'s Regts. in India, look upon these Mily. Courts of Requests, as regards the Soldiery—as highly injurious to the *morale* of the Army—It is said that Creditors cannot recover from the King's Soldier except from the "*Balance*" of his Pay ([24]); but why should such Courts be employed in deciding upon Debts to pay which there is no available means in many Cases; and Debts which would never have been incurred, had the "*Crying down Credit*" Article (111) been really considered, as it should be, a Command not to trust Soldiers!—There must be at every Court a Statement given in to show what "*Balance*" is due

The J. A. G. in a "*Memo.*" to the Mily. Secy. to the Comr. in Chief stated that—"In England, notwithstanding the 111th Article of War, Soldiers are by Clause 3, M. A. liable to Actions of Debt, and if of 30£ to be taken from the Service—therefore amenable to Section 57—(4 *Geo.* 4, c. 81.) That Debts due to the Captain of a Company, &c. have *prior Claim* to that of a Creditor. That if an Officer be in Debt the Insolvent Court always leaves sufficient for subsistence and necessaries; without which he is inefficient, (*so must be as to the Soldiers.*)

It is not generally known, that Debts to *Captain* have a *prior Claim.* They must of course, or there would be no efficient Soldiery. The above "Letter" and "Memo." prove the necessity for Legislative Enactment.

The 143rd Article of War declares—"When, &c. our Forces shall be employed in the *East Indies*, they shall obey the Rules and Articles of War, (*not mentioning Section* 57—*part of the M. A.*) for the Govt. of Officers and Soldiers in the Service of the E. I. Company, in all respects, &c. *not at variance* with the Rules, &c. made for all our Forces? H. M.'s Troops in India, are amenable to Section 57 (4 *Geo.* 4, *c.* 81) which countervails Clause 3—(*Annl. M. A.*) and prevents the Soldier's Arrest for 30£—and nullifies the good design of Article 111. These (Clause 3 and Section 57) are Antagonist Principles against Article 111 ! ! !"

([23]) The Order G. O. C. C. 5th July 1830, prohibited credit being allowed beyond Debts payable out of the Issue of Pay for the Month in which incurred (as under G. O. G. G. in C. 15th Jany. 1811)—i. e. in *December*, to pay for Debts contracted in *October*. The latter Order only allowed for daily Rations per man. G. O. C. C. 19th Decr. 1834, allowed unlimited Credit; and though not directed to H. M.'s Troops, still both the Orders (*5th July*, 1830, *and* 19*th Decr.* 1834) applied to the cognizance of Debts before the *Mily.* Court of Requests! Hence the Evil; as H. M.'s and the Company's European, as well as Native, Troops were equally concerned.

([24]) See Note 6.

to the Soldier, in the "*current and future months*;" for, in ignorance of such knowledge, the Court must decree in a way in which it cannot be executed—The Effect of the two Principles is this—under Article 111, the Shopkeeper is informed that if he trusts the Soldier, *or sell to a small amount*, he will not be paid—but, if he trust him to the extent of 30£—if he will only let it run on to that sum—he may arrest the Soldier, and take him from the Service—but, if in India, he may laugh at Article 111, and go to the Mily. Court of Requests ! ! !

11.—The arrest for Debt in the Case of a Soldier was for 20, now for 30£—I apprehend this raising the Amt. was designed to prevent the *State* losing the service of the Soldier for a Debt of 20£ ; neither the Soldier of Creditor need have been considered in this arrangement. ([25]) If I am correct in my opinion, then, to meet the Case effectually, I would raise the sum to 100£, so that then, no Man would trust a Soldier. If a man, a Citizen (and so is a Soldier, as to matters unconnected with Mily. Duties !) "shall win or lose, at any one time, "10£, or within 24 hours 20£ he may be indicted and "fined 5 times the value" ([26])—the object of this Law is to check Gambling—but, may I ask, is not Extravagance a species of Gambling—is it not admitting of the creation of a fictitious wealth at the Expense of both Debtor and Creditor ! Remedy.

12—In the *Mily*. Courts of Requests, borrowed from the *Civil* Courts—the "*Statute of Limitation*" ([27]) is allowed to govern the cognizance of Debts—whereas, I think, in the Case of Soldiers it should not go beyond 6 *months*; this arrangement, it will be seen, is just to Proposed No Debts beyond 6 months.

([25]) The words of Section 55—4. Geo. 4, c. 81. "And to prevent, as far as may be, any *unjust* or *fraudulent* Arrest, &c. upon Soldiers whereby the said U. Company may be deprived of their Services," and Section 56—"and instead of an Arrest, which may at once *hurt the Service*, &c. prove the Intention—and the Company's Act of 1823, was borrowed from that of the King."

([26]) 18 Geo. 2, c. 34, s. 8. See Russell on Crimes, &c. Vol. 1, 407. "And if any person so offending shall discover any other person so "offending, so that such person be thereupon convicted, the person "so discovering shall be discharged and indemnified from all penal-"ties, if such person so discovering has not been before convicted "thereof, and shall be admitted as an Evidence to prove the same," S. 9. I would apply this Rule to Soldiers' Debts !

([27]) 6 Years.

the Debtor and to the Creditor—The Debtor could not, then, have his Debt increased by any mode which is advantageous to the Creditor, by deferring payment to a distant day! And the Creditor, knowing that he must be paid in 6 months or never, would never suffer a Debt to become large—It would reduce the transaction to a period within the reasonable recollection of all parties. ([28])

Diffce. between Citizens and Soldiers.

13.—It will be admitted that men engaged in Trade can earn as much in *one week* as the Soldier does in *one month*—therefore, the man who has the least money to spend, should be enabled to make the most of his *Pittance*; and if he has not Prudence to avoid getting into Debt; the State should exercise its Authority, legislatively, and interpose a Remedy!—And it is a Maxim of good Government that whatever tends to demoralize the Subjects of a State, is injurious to the State itself. ([29])

Loans of Money improper.

14.—The Lending of Money to Soldiers is, in effect, "giving Credit" ([30]), and, is liable to the double objection of being a Debt and having the further means of procuring superfluous Articles ([31]); or borrow money to buy Liquor with at the *Canteen!* Perhaps a loan of 2 Rs. to pay 3 Rs. on *Pay-Day!* The Citizen of London be it also observed, if a Creditor trusts him beyond 5£, cannot go to the *Petty Court*, ([32]) but must sue the Debtor in another Court—whereas, in India, the Soldier may be sued in the Mily. Court of Requests for 40£. Prohibit lending Money!

15.—I think any Plan which shall prevent Soldiers getting into Debt, will, to a certain extent, check

([28]) Much inconvenience is experienced in Cases of Debts between *Native* Plffs. and Defts. long and intricate Accounts.

([29]) The Abolition of Slavery. The Laws against Usury. The making Lotteries illegal, and many other measures have been passed in this spirit—nor can a man always say, "I will do what I like with my own."

([30]) The G. O. C. C. 5th July, 1830, prohibited credit. In the "Sirhind Division" a G. O. prohibited the lending of Money—and until the Order of 19th Decr, 1834, the Mily. Courts of Requests threw out such Debts.

([31]) Every Officer knows that on the march of a Regt. the great quantity of superfluous Baggage which the Soldiers accumulate during a residence at a Station of 5 years.

([32]) Formerly had only Cognizance of Debts of 40s.

Drunkenness—for it is a notorious Fact that Soldiers sell their Regtl. Necessaries ([33]) to buy Liquor. This being an acknowledged Fact, it may easily be conceived, that buying Articles on Credit opens the Door to the Crime of Swindling. ([34]) Drunkenness.

16.—In the Native Army we may trace Desertions often to their Debts, in particular among the Moosulmans, who though good Soldiers, are extravagant. ([35]) That the Effect of unlimited Credit has produced an injurious effect, I have no doubt ([36])—with regard to

([33]) Clause 65 Annl. M. A. punishes the Buyer with a Fine of 20 and not less than 5£, and payment of treble the Value of the Articles bought—but the Penalty is not high enough: it should be 100£, and not less than 20£.

([34]) A Man buys an Article on Credit, for 10 Rs., and can sell it again for 5 Rs.—which 5 Rs. he spends in buying Liquor—For though he must pay ready money at the Canteen,—who ever asks—"Where do you get the money?"—the fact comes out but seldom—but, the Seller sues for the Debt in the Mily. Court of Requests—The Creditor declares he sold a Piece of Cloth for 5 Rs. (worth perhaps 3 Rs.)—the Debtor does not deny the fact—the Nature of the Transaction is often concealed—If no Credit were given—such Transactions could not occur.

([35]) It is well known that many of the Moosulmans volunteered to go on the Expedition to the Isle of France, and to Java; to run away from troublesome Creditors.

([36]) At the Station of Kurnal where the Force consists of:

1 King's Regt. of Infantry,
1 Troop H. A. (Europeans,)
2 Companies F. A. (Do.)
2 Regts. of N. Cavalry,
3 Do. of N. Infantry,

} The King's Regt. arrived there in Feby. 1831.

The amount of Decrees published in Station Orders, were as follows:

European Court of Requests.		*Native Court of Requests.*	
Years.	Rs.	Rs.	
1831	1,914	2,199	The G. O. C. C. 5th July, 1830—prohibited Credit. The G. O. C. C. 19th Decr. 1834—allowed of unlimited Credit.
1832	3,329	1,643	
1833	10,733	3,583	
1834	11,161	4,559	
1835	12,000	10,000	
5 years.	39,137	21,984	

Desertions. Cases not involving the Interests of the N. C. O. and Soldiers; the increase as to number and amount is, of less importance—But the Interest of the Soldier deserves peculiar regard..

THE EFFECTS AND CREDITS OF DECEASED OFFICERS.

Sect. XVI. Art. 1. 1.—The Members of the Committee of Adjustment are to be "not under the Rank of Lieutenant having served [not less than] 8 *and not less than* 5 years as a Commissioned Officer." (1)

Regtl. Debts, 4 Geo. 4, c. 81. 2.—The *Regtl.* Debts are not detailed in this Article nor in Section XLIX. of the M. A., the words are "All sums of Money due in respect of Mily. Clothing; Appointments; and Equipments; in respect of any Quarters; or any Mess (2); or Regtl. Accounts; and all Sums of Money due to any Agent

The Result is apparent, that the year 1835 in the *Native* Court, an Increase took place nearly equal to 4 to 1 compared with the years 1831, 32, 33, and 34. The G. O. of 19th Decr. 1834—could only operate in the year 1835!

In the *European* Court there is exhibited an Increase in the years 1833 and 1834—and I know, that the increase was owing to the Cases of European Soldiers; and caused the Reference alluded to in Note (22).

As the Order of 16th Decr. 1834 gave a general License, there was no drawing a distinction, so that *old* Debts, *before* thrown out, could not be rejected! For, the Order of the 19th Decr. 1831 cancelling the Order of the 5th July 1830; contained no Clause as to old Debts, *so* the Creditor could, legally, say—"The new Order does not restrict."

If the same Result has taken place at the other Stations, &c. I estimate that 4 Lakhs of Rupees are yearly decided by these Courts.

(1) I would propose 5 years as the Minimum to provide for Cases where there may be only 1 or 2 Cos. of Arty., &c. G. O. G. G. in C. 29th Oct. 1832—allow of 5 years in the case of Courts of Requests, and G. O. C. C. 25th June, 1832—allow Officers of 6 years for Members of Genl. Ct. Ml., &c. *Where to be had.*

(2) "Bills for Liquor of any Description cannot be considered as coming within the Sense of Sect. XLIX. 4 Geo. 4, c. 81, the Deceased Officer against the Estate of whom the Claim may exist having been a *Married Man.*" G. O. G. G. in C. No. 373 of 1824, 9th Decr. 1824.

There are certain Regtl. Dinners which Married Officers pay their Share of—such as Dinners at Inspections, or to a relieving Corps—such would be a Regtl. Debt.

or Pay Master, or Qr. Master, or any other Officer on any such Account, or on Account of any Advance made for any such Purpose—shall be deemed and taken to be Regtl. Debts"—the following should be added (3).

3.—"All Sums of Money due by a deceased Officer; and all claims on his Estate on account of Servants' Wages, House Expenses of the current or past month *or months not exceeding* 6 *months* (4); Bills of Bazar, Bunneahs for gram *or grain*, or other necessary Articles of daily consumption *for any period to the above extent*; funeral expenses (5); and Commission, not exceeding 5 per Cent. (6) on the Sale of Effects." Proposed.

4.—The Claims or Demands on private Accounts of Agents, Merchants, Shopkeepers, Tradesmen, Money Lenders, Cloth Merchants, or Dealers, are not in the Nature of Regtl. Debts, nor payable by a Committee of Adjustment: and though Money due in respect of the hire or purchase of Quarters is, money borrowed for the purpose of building, or purchasing Quarters, it is not a Regtl. Debt. The Secy. to Govt. Mily. Dept. is, under Section XLIX. to decide as to what is a Regtl. Debt. Not Regtl. Debts. If doubtful.

5.—Section XVI. Art. 1, declares, that after payment of Regtl. Debts, the Overplus, if any, shall be paid by the said Mily. Secy. to Govt. to the Legal Representative of the Officer so deceased. But, if he dies Intestate the Registrar has this Overplus paid to him. Neither Section XLIX. nor this Article provide for this Case; but, the Act. 6 Geo. IV. cap. 61. A. D. 1825 (25th June) directs the Committee, therein Act 6 Geo. 4, c. 61, why not in force.

(3) Paras 3 and 4. Circular—Secy. Govt. Mily. Dept. 26th August, 1831.

(4) These words should be added, to admit, without doubt, of Claims to such an extent. The words in *Italics*, new.

(5) Should include a "Monument;"—and Fees for Medical attendance, where claimable under 6 Geo. 4, c. 61. A. D. 1825, (25th June.) These are distinct from Shop Bills, &c.

(6) In the Case of a King's Officer who died last year, there was 5 per Cent. paid to a Serjeant as Auctioneer—the Depy. Secy. at War wrote to disapprove of, and ordered the recovery of, the money paid on such account; as it was inadmissible when a N. C. O. or Soldier was employed as Auctioneer. This I had from the Pay Master of the Regt.—there should have been a Circular, or Order, to caution Regts.

authorized, "to take care of, or collect, or superintend and direct the collection of the Effects of Officers or Soldiers (7) dying in the Service *out of the United Kingdom*; and to ask, demand, and receive any such Effects, and to commence, prosecute, and carry on any Actions or Suits for the recovery thereof, without taking out any Letters of Administration, either with any Will annexed, or otherwise, and, "No Registrar of any Court in the *East Indies*, or elsewhere, in any Colonies or Possessions of H. M. abroad, shall in any manner interpose in relation to such Effects; *unless required or authorized to do so* by any such Officers or Persons under the Provisions of this Act.:—*any Act or Acts of Parliament, Law, Statute, or Usage to the contrary notwithstanding!*"

Object to save Expense.

6.—The declared object of the above recited Act is, "the early Distribution of such Effects among the "Relations of Officers and Soldiers at small Expense, "and many Sums are hereby saved to the Relations of "Soldiers which would otherwise be, from their small "Amount, wholly lost; *and it is therefore expedient "to render the Provisions of the said recited Acts "(8), relating to such matters, more effectual.*"

Why not in Bengal.

7.—It is to be regretted that the Act has never been sent out to Bengal, (9) as not only has the Registrar the use of the Estate of the Officer in the Company's Service if he die Inststestate, for one year; but there must be a delay in the transmitting of the Proceeds of the Estate.

The Act has been used in the King's Army in India, &c. for the last 11 years—It seems to have been sent out to the *Madras* and *Bombay* Govts., but not to *Bengal!!!* There should also be such Rules laid down for the guidance of the Committees, as shall prevent any inconvenience or any mistakes—these are matters of a Military Nature,—there should be more of Equity than Law; and if any difficulty should arise the Com-

(7) Both of H. M.'s and E. I. Company's Armies.

(8) 58 Geo. 3, c. 73 and 4, Geo. 4, c. 81, s. 49.

(9) The Act has been in force about 11 years—every King's Regt. has a copy, and though it so much affects India, for which it seems to have been chiefly framed—its application is partial—and the Govts. of Madras and Bombay act on it differently.

mittee should be authorized to apply, direct, to the Registrar for legal Advice—([10]): but the Publication of some Rules of usual Application would save trouble to all Parties ([11])*

8.—The same Remarks apply to Article II. of this Section, as to *Warrant Officers*, N. C. O. and others under the Rank of Commissioned Officers. Same as to Soldiers.

All Crimes not Capital—Neglects and Disorders to the Prejudice of Good Order and Military Discipline. Discretionary Punishments.

1.—This Article declares that such Crimes "shall be taken cognizance of by Courts-Martial, according to the Nature and Degree of the Offence," i. e. by a *Genl.* or other Court-Martial, as the Crime may require as respects N. C. O. and Soldiers: but as regards Commissioned Officers there must be a *Genl.* Ct.-Martial—" and to be punished at their Discretion" —these latter words are omitted in Article 70 ([1]). Sextion XXI. Art ii. Discretion.

2.—As to N. C. O. or Soldiers Art. 79 declares the Punishments awardable by *Regtl.* Cts.-Martial, and Art. 77 as to *District* Courts-Martial and as to their Nature and Degree—while *Art.* I. of this Section declares that no Officers, N. C. O. or Soldiers, shall be adjudged to suffer any Punishment extending to Life *or Limb*, ([2]), Art. i. Not Life.

([10]) The Office of Registrar is a most lucrative one; and I see no reason why any Officer's Estate should be dwindled down, by allowing the Registrar the use of the Estate for a year; which is equal to a reduction of 5 per Cent.

([11]) The Rules should—1. Suppose a will found—2. No will found —3. The Executors in India—4. The Executors in England, &c. 5. The Property in India—6. Part of the Property in India, and part in England, &c. &c. &c.

([1]) They were in Sect. XXIV. Art. II. (1824.)

([2]) I recollect on asking Sir B. Bosanquet, (then the Company's Standing Counsel.) a Judge of K. B., why the words "*or Limb*" were still used—he replied "There is a great *dislike* to alter *old* Enactments"—" but," I remarked—" as they do not now *cut off Limbs*, there can be no danger in leaving out useless and unmeaning words." The Judge laughed, and well he might. The fact is, he was told to make the " Company's Code" word for word like the King's

by Virtue of these our Rules and Articles, within the Company's Possessions; except for such Crimes as are herein expressly declared to be so punishable within the same.

Proposed.

3.—The words should be "Provided that no Officer, N. C. O. or other Person, shall suffer any Punishments extending to a *Sentence of Death, or to Transportation* (3), by virtue of these our Rules and Article, *or the Mutiny Act*, within the Company's Possession, (4) except for such Crimes as are herein *and therein* (5) expressly declared to be so punishable within the same."

Nor Transportation.

4.—As to the Sentence of *Death* it can, in no *Mily.* Case be passed within the Company's Possessions, except where it is specifically laid down—either by the *King's or Company's* Code. As to *Transportation*, only in one *Mily.* Case, that of *Desertion* (6)—in the Company's Army—in the King's, in all Cases of "Death or other Punishment."

5.—As to *Cashiering* (7) by Articles *(King's)* 54 to 66, and 68, 69, Officers are *liable* to be Cashiered (8), the *Discretion* of the Court will apply to any Case provided for by this *liability*; or not provided for in direct terms as to the "*Nature* and *Degree* of the Offence"—but they are "Crimes not Capital, and all Disorders and Neglects to the Prejudice of good Order [and] *or* (9) Mily. Discipline."

as far as local circumstances would admit: the great question reserved for Debate being Section II. 4 Geo. 4, c. 81—the Trial of Officers and Soldiers for Murder, &c. at places above 120 miles from Calcutta, Madras, and Bombay. The King's Clause 9 M. A. retains the words "Imprisonment, &c. or &c. to corporal Punishment, *not extending to Life or* Limb." I propose the omission of the words "*or Limb.*"

(3) Clause 4. M. A. (Annl.) uses the word "Transportation," and so in Act 141.

(4) Section XXXIII. allows the King to frame Articles of War from Time to Time.

(5) As to the Mutiny Act.

(6) Section VII. 4 Geo. 4, c. 81.

(7) Arts. 19 to 37—and 43 to 48. To be *Cashiered.*

(8) Dismissal (used in the King's M. A. Clause 8, only) and Discharge, are used in the Company's Army—the Sentence of Cashiering is the general one in the King's—and I would make it so, even in Clause 8, and in the Company's Code.

(9) The words "of good Order *and* Military Discipline," admit of a Cavil. The substitute of the word "*or*" for "*and*"—prevents it.

6.—*Section XIV. Art. VIII.* ([10]) declares that "Officers convicted, &c. and of any Offence, for which such Officer may be sentenced to such Punishment as may be adjudged at the *Discretion* of the Court, the Court may, in *all such Cases*, adjudge the Officer to be suspended from Rank and Pay, and Allowances, &c. or to lose his Rank, or such Portion, &c."; so that this is another Case in which the Punishment is not stated, but is left discretionary.

7.—As to N. C. O. or Soldiers, Section XXIII. M. A. 4 Geo., c. 81 admits of Imprisonment, Solitary or therwise, or of Corporal Punishment, in the Case of "Immoralities, Misbehaviour, or Neglect of Duty"—here we have "*Immoralities*" not mentioned in Act II. —Section XXI.

8.—I would for the sake of Perspicuity use these words after "punished at their Discretion"—"*Provided that no Sentence of Death, Transportation,* ([11]) *nor Corporal Punishment, except in the Cases provided for* ([12]), *nor any Forfeiture as to Pay or as to Pension on Discharge shall be awarded in any Case not so directed in the M. A. or Articles of War; but such Courts-Martial may sentence to any other Punishments and to the Extent allowed by the M. A.* Proposed.

Some may argue that the Conduct must be to the Prejudice of "*good Order and Mily. Discipline*"—i. e. distinctly as to "Mily. Discipline." Thus :—

Art. 31. Cashiers an Officer for "behaving in a scandalous, infamous manner, unbecoming the character of an Officer and a Gentleman" (I propose "or a Gentleman). Lt. J. M., 9th Foot, so charged was acquitted of "*scandalous, infamous,*" but still Discharged—which sentence was remitted. (G. O. H. G. 26th January, 1820. P. C. M. (1825) p. 525. Case 6.) He was convicted of "for Conduct, such as is unbecoming the Character of an Officer and a Gentleman, in assaulting and striking Lt. G., H. P. W. I. Regt., in the Mess Room, &c." Now, here, for an offence proved less than that charged, a Sentence of Discharge is awarded which was the then legal and positive Sentence for the case if fully proved—still the Court by not finding the "*scandalous, infamous,*" made it a special Case, as well a Case of *Discretionary* Punishment.

([10]) Art. 73 the same, as to Loss of Rank.

([11]) "*General Service.*"—I have before proposed should be omitted as contrary to G. O. H. G. 25th January 1826.

([12]) G. O. H. G. 24th August 1833.

" *or Articles of War and according to the Usage and* " *Custom of the Army*". ([13])

9.—It must be clear to every one, that the Article is, by its General Terms, to supply a deficiency in a Code which, (though from time to time improved by specific Provisions as the necessity for their Enactment may arise,) cannot provide for all Cases. But it should be recollected, that in construing the words " *at their Discretion,*" every Officer on a Court-Martial

Spirit and Meaning.

should look at the Spirit and Meaning of the Article ([14]) as connected with the previous Article ([15]) "not extending to Life or Limb;" and that *Death* and Transportation ([16]) are excluded. Forfeitures as to Pay or as to Pension on Discharge; are allowed in certain Cases only. Therefore, in point of fact, though the Article itself is not so worded as it should be; still there is another mode of viewing it.

10.—The Oath of the President and Members is—"and if any doubt shall arise; then according to my Conscience; the best of my Understanding: and *the*

Custom of War.

Custom of War in the like Cases." Suppose the Case of an Officer as in note 9—the not finding his conduct to be " *Scandalous, infamous,*" but to be " unbecoming the Character of an Officer and a Gentleman," the Court still Sentenced the Officer to be " Discharged." I know that " *Samuel,*" ([17]) and many other Lawyers hold the Doctrine that in the above Case the Officer should be acquitted; but they proceed on the Law or Libel ([18]), which has nothing to do with

([13]) Here Cts. Martial are distinctly told what Punishments they cannot award.

([14]) II. of Section XXI.

([15]) I. of Do.

([16]) " Transportation" excepted by Art. 141—and in the Company's M. A. Sect. VII, restricted to " Desertion."

([17]) P. 646.

([18]) G. Long, Esq. the Barrister, who corrected my 2d Work, and another Lawyer, said that was the Law. But I said—ours is the Law of *Officers and Gentlemen* and not the Law of *Libel*. The King or the Company have the Power to " Dismiss" any Officer without Trial. This Power is seldom exercised—but, assuredly, if any Court-Martial refrained from passing a Sentence in such a Case as that stated in Note 9, the King or the Court of Directors would use their Prerogative. See Note 310. p. 499, and p. 503-3—(Hough's) P. C. M. 1825.

the Case—([19])—The clear object of the Article is to punish Crimes and Offences which could not all be provided for: there are "Omissions" as well as Commissions" which the peculiar Duties of the Army require to be left to be punished by Officers; who really look at such Questions as Military Men; and not as Lawyers. ([20])

Rank of King's and Company's Officers at Courts-Martial and on other Duties.

1.—Art. 139 states that "the Officers in the *East India* Company's Service shall take Rank with the Officers of our Forces according to the Dates of the Commissions held by them respectively from us, or from Authorities duly deputed by us."

2.—The old Annl. Article of War (1824) Art. II. Section XXII had the Words "and take *precedence* of Officers of *equal Rank* in the Service of the said U. Company *not holding also a Commission from us, although the Commission of the said U. Company's Officers should be of elder date.*"—It will be seen that Article 139 has these additional Words "*or from Authority duly deputed by us*"—which clearly explain, that Company's Officers *having* King's Commissions signed by the Comr. in Chief, (as authorized by H. M. George 3rd by Warrant dated 28th March, 1788) are to rank with King's Officers—according to the Dates of their Commissions—those Officers *not* having King's Commissions, or Commissions signed by the Comr. in Chief in India, have not this Benefit.

3.—Article 139 requires these words after—"or "from Authority duly deputed by us"—"Provided that "where the Commissions of the said King's and Proposed.

([19]) In a *Criminal Information*, the Deft. cannot prove the Truth of his Accusation. In an Action for *Damages* he can. To prove the *Analogy* between the two Cases; I ask, which will the assertor of such a Doctrine choose? He cannot both—now in the Officer's case, he can prove that the Accusation is false. In the former Case of Libel he cannot!

([20]) Some assert that you cannot *Cashier*, unless the M. A. or Articles of War provide for the Case. There are certain Articles which *direct* such a Sentence—others render an Officer *liable* thereto. These the Legislature choose to so declare and provide for—leaving the rest to the good sense, and Honor of Officers and Gentlemen.

" Company's Officers shall bear the same Date, regard " shall be had to their respective Commissions in their " former Ranks--and if their first Commissions shall " be of the same Date : then the King's Officer shall " have Precedence of the Company's Officer."

4.—I merely mention the above in Reply to a Question which has been sent to me by an Officer who being at a Station where there are no King's Troops (at Neemuch), thinks that the old Article, as quoted at page 366 of my second Work (1825) still remains in force—I would here recommend that a Copy of the Annual Articles of War be sent to every Comg.' Officer of a large Station—Barrackpore—Dum Dum —Neemuch—Mhow—Nusseerabad—Saugor—and to all large Stations—There was not a Copy in the Sirhind Division (at Kurnal) till 1829—a Copy being then sent to me as J. Advte.

Proposed. 5.—The same should be done as to the Company's Mutiny Act and Articles of War—a Copy should be sent to each King's Regiment.—The Officers of both Services have to sit in judgment on the Officers and Soldiers of another Service—why, merely because there are no King's Officers or Soldiers now at *Saugor*, &c. should not Officers, who are to come say next year, to a Station where there are King's Troops, be able to know the " Rules and Articles of War which govern H. M.'s Troops: and why should not H. M.'s Officers also, at all times, be able to refer to the Code of the other Service.—It is too late when an Officer comes into Court, to *begin to learn what he ought to have known years ago.*

6.—The Codes of the two Services should be in the hands of Officers of both Armies—the expense would not be 50£ a year. While upon this subject I cannot refrain from remarking, that of the Evidence of the Mily. Commission taken before the House of Commons as to the "*abolition of Corporal Punishment, or a Substitute in its stead*"—there were 2 Copies only sent to Bengal (Calcutta) one to the Gov. Genl. of India, and one to the Comr. in Chief in India—I believe there were 6 copies only, " Public and Private," sent to Bengal—though the question is one of Vital Importance to the King's and Company's Armies in India: if not to India itself!

Preliminaries before Trial.

Accusation.

1.—The G. O. C. C. 8th Feb. 1802—direct a previous and full Investigation in all Cases of Charges or Accusations being preferred. The Order recites—"The frequent assembling of General [1] Courts-Martial being productive of much inconvenience to the Public Service—the Comr. in Chief directs that when a Charge shall be preferred against either an *European* or *Native*, the Senior Officer on the Spot shall order a full investigation to be made into the grounds of Complaint, the result of which accompanied by his own Report and a List of the Witnesses, who have been examined, is to be forwarded to the General Officer Comg. in the District." Ct. of Inquiry before Trial.

2.—"In the event of the General Officer Comg. in the District not being satisfied that there are sufficient grounds to bring the person accused to trial, or that the Inquiry has been carried to the extent which the circumstances of the Case admitted, he will thereupon direct such further Investigation to be made as he may deem necessary; and if, on consideration of the whole of the Proceedings, he shall be convinced that the Charges are frivolous or ill-founded, he will thereupon order the Prisoner to be enlarged, and report the whole particulars to Head-Quarters." Further Investigation.

3.—"In drawing up the Charges, accuracy and precision are indispensable. All Charges ought to be drawn out in so full and clear a manner as to leave no room for doubt or misconception; and it is the duty of the Judge Advocate to remonstrate against the Court's proceeding to trial on a Charge that is Charges.

(1) What would Lord Lake have said if alive, on hearing that there were 118 in 1835—and 159 persons tried in 1834—while from 1824 to 1833, both inclusive, there were 483 persons tried in 10 years being an average of 48 or 49 yearly. The year 1834 more than equal to the average of 3 years. See Title "*Genl. Ct.-Martial.*" Miscellaneous matter.

Even in Cases of Regt. Courts-Martial, in intricate Cases, Court of Inquiry are held.

deficient in accuracy or perspicuity." (2) I have given the above Order as it is published in the Mily. Regns.

Speedy Trial. 4.—It was declared by H. M. Geo. 3—(3) that material Justice requires that all Offences should become the subject of Investigation and Trial as speedily as possible after the time of their Commission. "His Majesty, adverting to what has in some measure appeared in the course of both these Trials, has expressed his extreme disapprobation of keeping Charges against an Officer or Soldier in reserve, until they shall have accumulated, and then bringing them before a General Court-Martial collectively; whereas every Charge should be preferred at the Time when the facts on which it turns are recent, or, if knowingly passed over, ought not either in Candour or Justice to be in future brought into question."

Limit of three years. 5.—The first consideration is as to the Time when the Offence was committed. The Limitation is 3 years, except the Person has not been amenable to Justice within such time, by "his absence or some other manifest Impediment" (4)—This Limitation taken in a Mily. point of view, is more favorable than the Common Law. If a Crime has been committed, not *beyond* the period of the Limitation, the Trial may take place; if the *Impediment* shall not exist to delay it. (5) But, it would be unpardonable, even, to delay the Trial of any Crime known at the present Time of Commission;

(2) See Miscellaneous Matter—Title—"*Plea*"—"*Charges*"—"*Genl. Ct.-Ml.*" &c.

(3) Tytler 163—Exts. Remarks on Trial before a Court-Martial held at Edinburgh, in March 1798. See "James's Decisions."

(4) Anl. Art. 20.—Sect. LXXI. Company's M. A., but if the Case has been referred to the Ct. of Directors 5 years is the time instead of 3 years. It appears that before 1800 "*Desertion*" was an excepted Case and tried after any lapse of time ! p. 119. M. S. J. A. G. O.

It must be recollected that this Limitation only extends to *Mily.* Offences. By the *Common Law* a man may be tried after any lapse of time, unless limited by any particular Statute. (P. C. M. p. 458, Note 224.) Gov. Wall (*Goree*) was tried in 1806 for a Murder committed 20 years before—Clews in 1830 for a Murder in 1806, and other Cases might be quoted.

(5) In Cases of Murder or even *Mily.* Cases affecting Life, the sooner the Trial takes place the better.

unless the Public Service rendered it inconvenient (6) to proceed with it. (7)

6.—Another point to be considered is, whether the Evidence is of that nature that a legal Conviction can be insured. I have before shewn (8) that the Genl. or Officer Comg. the District, is to see that all the necessary and available Evidence is brought forward—this is the object of the Court of Inquiry. The D. J. Adv. Genl. of some Divisions (9) has the perusal of the Proceedings before they are sent to the Adjt. Genl. of the Army; (10) he certainly should do so in all Cases of Crimes affecting Life; and all Cases of a complex or doubtful Character; (11) as he may suggest Questions or points of investigation, of which it is his Duty to be informed. (12) Proofs.

7.—Another Point is, whether, considering the nature of the Case, the Crime, if proved, will deserve any punishment, or notice which might without Trial be passed on the Case; for, as regards Officers, if a If Trial is required.

(6) The Public Interests must be a first consideration. The danger of Delay is great—the Witnesses for the Prosecution and Defence may by delay, be at a distance, may have gone to Europe, or left the Country—(See Miscellaneous Matter—" *Charge given up.*" The Prisoner has not the perfect recollection as of a recent Transaction—He may, thinking the Case bygone, have destroyed Papers which would have been the means of his acquittal. He may be removed from a distance from the advice of friends—his witnesses may be removed to a great distance, they may be dead—and many other circumstances may combine to cripple his Defence—even the witnesses for the Prosecution who might have been favorable may not be forthcoming. In the Case of an Accusation of Rape—if the Woman does not " presently discover the Offence," the Law casts suspicion on it—Blackstone 4—213. And in many Cases of *Misdemeanors* even 6 months are often made the Limit beyond which an Action will not lie.

(7) Though no Officer or Soldier can be tried after the time limited, a Court of Inquiry may be held at any Time—(Sir C. Morgan, late—J. A. G. Tytler p. 161.)

(8) Para. 2.

(9) Who sometimes conducts Special Cts. of Inquiry.

(10) The A. A. G. of Division is the Staff Officer to whom they are sent.

(11) The Adjt. Genl. submits them to the Comr. in Chief, and before Charges are framed, the Case is usually sent to the J. Adv. Genl. In ordinary *Mily.* Cases they are not sent to the J. A. G.—at Home only in Cases requiring his opinion.

(12) Every J. A. of fair ability and application, must have more knowledge of Judicial Duties than other Staff Officers more talented—and we may say with respect to efficient Officials, that ability resulting from research, is more useful than talents of the highest order.

Reprimand were to be the result—which Reprimand is to be given "in such manner as the Comr. in Chief may be pleased to direct," and in General, Orders—I think in some Cases, the Court of Inquiry, (or other mode of establishing such culpability,) having been held; it might be noticed in G. O.—in a way sufficient for the occasion. ([13])

Comg. Offirs. of Regts.

8.—The mode of arriving at a correct knowledge of Facts proper to be submitted to the solemn Ordeal of a Military Tribunal, is of great Importance. Much may be affected by the zeal of the Officer Comg. the Regt., who should be expected, before he submits a Case to superior Authority, to fully investigate, himself, every circumstance by means of a Court of Inquiry; for no private Investigation can ever impartially elicit the real Truth, or satisfy the Parties. The parties concerned, if not all present, have not a previous means of bringing forward those points favorable to their Case; which if known, might render a Trial unnecessary. ([14])

List of Witnesses.

9.—Another important consideration, regarding the Proceedings of a Court of Inquiry, after every thing has been done—when the Officer ([15]) has full opportunity of being present, and states the Witnesses to rebut the Charge—it should be directed, in all Cases, that there be a List sent with all Courts of Inquiry, detailing where they are; and the means of procuring their attendance; or if sick; and a Report should be made to the General or other Officer Comg. the Division when any Delay is likely to take place as well as to the J. Adv. Genl ([16]) The order on the subject is

([13]) Another important consideration is, the *character* of the Testimony to be adduced—whether the Witnesses for the Prosecution though equal in number, are more deserving of Credit than those for the Defence—whether there is any Party Spirit or Bias against the accused—whether the Accusation has been brought forward from Motives of Malice—or from Motives in which the good of the Service has no share in the Conduct pursued towards the accused!

([14]) We must recollect that the Analogy of a Court of Inquiry with a Grand Jury is here lost sight of—I shall, under the Head "*Court of Inquiry,*" enter into the Case more fully.

([15]) I allude chiefly to the Cases of Officers; for the Trial of N. C. O. and Soldiers is usually ordered by the Genl. Officer Comg. the Division. In the Case of King's Soldiers, it is so *ordered*, in India.

([16]) A Report is very properly ordered to be made by D. J. A. G. to the J. A. G. Weekly, as to the probability of any delay—in the

excellent, because it gives the Comr. in Chief the means of regulating the Time of Assembly of a Genl. Ct.-Martial—for otherwise, Officers may be drawn from other Stations to be Members of a General Court-Martial; (17) or Courts may be ordered when the Witnesses are not forthcoming.

10.—A Charge should be laid before the Court of Inquiry, and also a List of the Witnesses, and if the proof fail to substantiate the Charges, others should be prepared before the Proceedings are sent to the Adjt. Genl. (18) In framing the Charges which are to be submitted to trial before a Genl. Ct.-Martial, care should be taken that they deviate not from the Truth, or do not overcharge the Facts of the Case. (19) The use of the words "*Scandalous-Infamous-Conduct*"—and the like terms, should rarely be used—for if not proved, and though hon'bly Acquitted, still there is, in all honorable minds, a feeling of disgust in hearing Charges read against a brother Officer, who, to their minds, is innocent till found guilty—nor does the Law of the Land set the example of using such Epithets. There is a legal Phraseology, necessary in some respects, by which we style "*Murder*," as "*Malice aforethought*" to distinguish it from the Crime of "*Manslaughter*"—and in the Crime of High *Treason*

Charges.

Not overcharged.

Case of European or Native Commissioned Officers. I think the Circular should be general; for there are other Cases where it may equally apply. See Circular J. A. G. No. 504—26th Sept. 1835. *Miscellaneous Matter*, Title "Judge Advocate."

(17) In the Case of the late Lt. Col. Hunter, tried at Meerut, in 1834. Officers were brought from Muttra, Delhi and other Stations: and not one of the Officers at Meerut was on the Court.

(18) The J. A. should draw up the Charges, or See them before sent to Head Quarters—See Para. 3.

(19) In the operations in Bundelkund, on 21st to 27th May, 1804, Lt.-Col. F. 5th Native Cavy. Comg. the Force, was tried on the following charges:—

Case 1—*Charge* 1st—" For neglect of Duty and unofficerlike behaviour in detaching Capt. S. —with the 1st Bn. 18th Regt. N. I. and Dett. of Art. under Capt. F. on the night of the 20th or morning of 21st May 1804, to *Belwah*, when he (Lt.-Col. F.) knew, on the 17th of May from, &c. Lt.-Col. S. that the Enemy had entered the country in force, and was informed on the 20th of May, previous to the march of Capts. S. and F., that a Dett. of the Enemy had arrived at *Erich*, and by such neglect of duty, in allowing Capts. S. and F. to march, having exposed them and the Detts. under their Command to the risk of being cut off.

"*Traitorous*;" but, in other Cases, we find not strong terms used in Indictments! The Article ([20]) punishing behaving in a "*scandalous, infamous manner*" should be seldom used. If the Officer's Crime were charged to be "*Unbecoming the Character of an Officer and Gentleman,*" and the facts proved warranted a Sentence of Cashiering, such a Sentence would be passed. If "*scandalous, &c. manner*" be charged, and be not proved; and though an hon'ble Acquittal follows; there remains still the *stigma* of having been charged with undeserved Censure. ([21])

2d.—For shameful neglect of Duty on the 22d May last, in not supporting, or sending assistance to, the Detts. under Capt. S. and F. from 2 A. M. until about 10 A. M. of the same day; although he (Lt.-Col. F.) knew that these Detts. were exposed to the attack of a Superior Force, and by this shameful neglect of Duty, having caused the loss of Capts. S. and F. and the Detts. of Arty. Sepoys, and the Guns, which were at *Betwah.*

3rd.—For *Scandalous Misbehaviour* and shameful neglect of duty in delaying to take any steps to attack the Enemy or to use any endeavour or exertion to recover the Guns, which had been taken on the 22d of May last, by the Enemy, from the morning of the 22d until the night of the 24th, or morning of the 25th of May.

4th.—For *Scandalous Misbehaviour before the Enemy* on the 25th of May, in not attacking, or endeavouring to attack, the Enemy, when they were on the opposite side of the River, or when they were upon the march, as he (Lt.-Col. F.) states, *when the Enemy had no intention to attack him.*"

5th.—For shameful neglect of Duty, and Conduct tending to bring *Disgrace* on the *British Arms* by retiring behind the *Betwah* River on the 27th May last, in consequence of hearing a Report, that the Enemy had taken *Culpee*, when he, (Lt. Col.-F.) knew that the Enemy had neither Infy. or Guns, and if the place could have been carried by dismounting Horsemen, Lt. Col. F. ought not to have entertained an opinion so *disgraceful* and injurious to the Troops under his Command, as that 5 British Corps and 8 Guns were not equal to retake it within a very short space of time."

It is said these Charges were brought forward to appease popular Clamour: and he was fully acquitted. The fact is, the constant Success of Lord Lake, and the failure of the Hon. Col. M.'s Dett. (though the *Colonel* was never tried) was the Original Cause of the trial!

Case 2.—In the Case of Lt. Cl. Hon. T. M. 44th Regt. for the affair at *New Orleans* on 8th January 1815—the 2d Charge was for "*Scandalous and infamous misbehaviour before the Enemy near New Orleans, &c.*" of which part he was *most hon'bly acquitted*—but Sentenced to be Cashiered for other conduct—(G. O. H. G. 14th Sept. 1815.) Case 26 p. 109. P. C. M. (Hough.)

([20]) Art 31.

([21]) Case 3.—In the Case of Major Genl. P. tried for a failure in Upper Canada in Sept. and Oct. 1813—and charged with conduct *Disgraceful* to his character as an Officer—" in not attempting to rally

It is a cruel thing to overcharge the Conduct of any Officer: and if any Officer who shall fail to prove the Facts charged by him to be "*scandalous, &c.*; he should be himself tried. I would never suffer any Charges to be framed without Official Revision!

the Troops, &c." he was thereof fully and hon'bly acquitted, but Sentenced to be publicly reprimanded and to be suspended from R. and P. for 6 months—" for Error in Judgment, and deficient in energetic and active Exertions." Confirmed as to the " Reprimand. G. O. H. G. 9th Sept. 1815. Case 5—p. 347—P. C. C. (*Hough.*)

I have been assured by the brother of the late General, that he died of a broken heart at the age of 41! His Superior Officer was ordered Home, I heard from good authority, for trial; as it was found out that he had occasioned the failure, by not reinforcing Genl. P.—he died on his passage Home. See also, *James's* Account of the Campaign.—*Westminster* Rev. 1826-8.

CHARGES.

Simple.

1.—Charges should be simple and divested of the intricacies of Civil Law, and of technical formalities, and be drawn up in the plainest language as to the Facts charged; so that the Prisoner of the least understanding may comprehend the Accusation made against him. (1) And it has been declared to be improper to unite a number of Charges, each separately considered venial and trifling, to form grounds for bringing an Officer to trial; which should only be resorted to in extreme Cases. (2) All Charges should, also, detail the names of the Places where the Crimes were committed, and the dates of the Facts to be charged; so that the Prisoner may be able to know *precisely* where to look for his proofs to rebut the Charge. (3) If the facts of Accusation to be brought against a Prisoner relate to distant periods, it then becomes a question whether Evidence is capable of being produced so as to afford reasonable ground that the Charge will be proved. If not, or the Evidence on any particular points is insufficient as proof, by reason of the death, or unavoidable absence of Witnesses from India, &c. or that the Witnesses are very distant and cannot be brought forward without great inconvenience to the Public Service—and as regards the Witnesses for the Defence as well as for the Prosecution—then, in the one case the Charge should be abandoned—and in the other, the question should be, whether it be absolutely necessary to try the Person notwithstanding the inconvenience; or whether the more advisable course may not be to refrain from arraigning the Party, and marking his Conduct in some other way. If the Conduct be such that, on Convic-

Facts and Dates.

Distant Periods.

(1) G. O. C C. 25th Nov. 1826. See "*Charges*" Miscellaneous Matter.

(2) G. O. C. C. 8th July, 1826. If it be said that if such Charges are sent to the Adjt. Genl. they will be returned, the fact is true—but there must be a delay and Correspondence, in a Case in which the Officer may be kept longer in arrest; which might be avoided if those in Command always investigated minutely into all Complaints and Disputes, before sending them to the Genl. or other Officers Comg. Divisions, &c. This is a duty of the very first importance.

(3) See "*Plea.*" Miscellaneous Matter.

tion, the Officer would be Cashiered, or that an Example be required, then Justice would require a public Trial. Where a person in Civil Life has cause to make a Complaint, he should send a written statement to the Comg. Officer of the Officer's Regt., by whom it will, through the proper channel, be forwarded, if necessary, to the Adjt. Genl. of the Army. (4) By Civil Persons.

ADDITIONAL CHARGES.

1.—It is stated by *Capt. Simmons* (5) that "A Court-Martial *cannot* entertain any additional Charges brought forward subsequent to the *Swearing* of the Court and the arraignment of the Prisoner, either as referring to the Charges in issue or to a distinct Offence. This rule is not only established by the Custom of Courts-Martial, but must result from the terms of the Oath administered to each Member: "You shall well and truly try and determine, according to the evidence, in the *matter* (6) *now before you.*" The Prisoner is unquestionably amenable for any When preferred.

(4) In the Case of an Apothecary of a County having a Complaint to make against an Officer of the Regt. of Militia for supposed mismanagement in Regtl. Affairs, and made it to the Comr. in Chief, demanding the trial of the Officer,—it was decided that, not being a *Mily.* person, he had no Right to prefer *Charges*, nor to *demand* the Trial of an Officer—but was advised to make his Complaint through the Regtl. Authorities.—*Williamson's Anot*, p. 61, note 106. MS., J. A. G. O., p. 147.)

If sent direct to the Adjt. Genl. even, it has to be laid before the Comr. in Chief. It has to be referred to the Officer Comg. the Division to be sent to the Officer Comg. the Regt. to which the Person belongs; or may be sent direct to the Officer Comg. the Regt. (except where the Comg. Officer himself be the Party complained against.) So that the Adjt. Genl. and Comr. in Chief would have the Case at least twice submitted—whereas, by adopting the proper course, it may be settled without the Superior Authorities being thus troubled. The Adjt. Genl. would, I apprehend, return the Complaint to the person who sent it, with directions to adopt the regular Course of proceeding: but the object is to prevent inconvenience. That such persons may know how to proceed, when they have a Complaint to make.

(5) p. 147 (1835.)

(6) I have proposed (p. 23) the use of the word "*Matters.*" See Note 53.

Offence *unconnected* (7) with the subject-matter in issue, committed within the limited period, prior or subsequent to the date of arraignment; but such Offence must form the substance of a separate Charge, and the trial be distinct. The Court, if ordered to try it, must pass Judgment on the Charges to which the Prisoner has pleaded, and, being re-sworn, proceed independent of the former trial, and as in ordinary cases."

2.—If Capt. Simmons means that Additional Charges in relation to another and distinct subject, I think so too, (8) because though *Military* Courts are not bound by the strict Rules of the *Civil* Courts, still it is not right or just to call upon any man to plead to several and distinct Crimes. But an Additional Charge relating to the same subject, or continuation of misconduct, and if due notice be given, and the Prisoner be prepared (and if not prepared time must be given him) there can be no legal objection. I have purposely worded the Oath by the use of the word "*Matters*," that such Additional Charge might, without dispute or cavil, fall within the strictest construction of the Oath. Additional Charges may be framed by a Court in Case of Contempt, and after the Sentence on the Original

(7) I do not understand this reasoning—surely, if a fact *connected* with the Trial in issue becomes known within the period of limitation for Trial, it may be tried—it may be connected in this way—*A.* is tried for embezzling Money belonging to *B.*—if afterwards appears, that *A.* had committed another similar Crime towards the said *B.* not known till the Court had been sworn and the Prisoner arraigned. Capt. S. surely will not contend that such could not be tried; he says if "*unconnected* with the subject matter in issue," as if, omitting to try at the *precise time*, any matter *connected* with the issue, was a bar to a trial, even though by another arraignment! Clause 16 Annl. M. A. and Sect. XVI. Company's M. A. only declare that "no Officer or Soldier acquitted or Convicted of any offence, shall be liable to be *tried* a *second* time for the same offence—unless in the Case of an Appeal from a Regtl. to a Gl. Ct. Ml."

(8) Mr. Adv. Genl. (Pearson) I have understood, stated that, "at Common Law, Murder and Rape should be tried separately." But surely, Mutiny and Desertion may be properly tried, in the following Case. A Soldier knocks down a N. C. O. in the execution of his duty, and then deserts—now, in this Case, we see that though there are two distinct transactions—there is no proper separation to be made. The Evidence would prove the fact of quitting the Regt. and the only remaining Evidence would be the non return, and subsequent Conduct. Surely you would not hold a fresh Court, to produce such Evidence.

Charges, the Court may pass Sentence for the Contempt—(*See Index*)—Colonel Kennedy, p. 51, (1832) treating on *Addl.* Charges, states—" but if, before the receipt of the *latter*, the Prisoner has been arraigned and the trial commenced, the manner in which the Court should proceed still remains a point which has not been yet decided by competent Authority." I think it should be settled, that, " any Additional Charges relating to the same subject-matter, or in continuation of the Prisoner's *then* misconduct, or in Cases of Breach of Arrest, or of Contempt of Court, may be tried notwithstanding the Court shall have been sworn, and the Prisoner duly arraigned, provided due notice and time be given." **Proposed.**

FORMER CONVICTIONS.

1.—I have gone into the Question of previous Convictions at p. 57. At Home, previous Convictions are not confined to the *same Offence* as that for which the Prisoner is tried. At Winchester 11th Jany. 1831, Wm. Brookstone was tried for "*Machine-breaking*"—on Verdict of Guilty being recorded, *Mr. Serjt. Wilde* tendered the Certificate of his former Conviction " for *Fowl-stealing* in Dec. 1820, and his Sentence to Transportation for 7 years beyond the Seas." ([9]) I would strongly recommend that *all* Convictions, whether the Trial be for a *Mily.* or *Civil* Offence, or that the previous Convictions were for a *Civil* or *Mily.* Crime—should be given in Evidence in *all* Cases, ([10]) **Proposed.**

([9]) Mr. Jus. Parke said, there was a difference of opinion among the Judges, as to the practice upon this Point. When on the Northern Circuit with his brother Park, Jus. *Park* thought Evidence of a prior conviction should be tendered *before* the Verdict; and he, that it should be *afterwards*.—Examiner 16th Jany. 1831. It seems the Judges have decided in receiving the Certificate *before* charging the Jury—I cannot see why it should not be so in *Mily* Courts. And I think, as above described, the former Conviction should be recited in a Count of the charge. It is clear that if the former Conviction be for a different offence than that under trial, it cannot affect the issue; unless people presume that because a man has committed one Crime, it is probable he has committed another.

([10]) The Circular prohibiting their being received in *Civil* Cases, is grounded on the 84th Article of War—see " *Convictions previous* —Miscel. Matter. I am arguing as to the incorrect principle of the Article.

for if a man has subsequently behaved well his Character will be of advantage to him—if his Character has not been improved—then is the greater reason to produce them. ([11]) As to the reason for the thing, it is surely the same thing, whether a Soldier be tried, convicted, sentenced, and the Sentence executed—by a *Civil* or *Mily.* Court—the *Crime* is the *same*—and the *object* of the Article ought, in reason and equity to be the *same* in both Cases. There should, if my rule be adopted, be a direction that on the Prisoner's return to his Regt. a Certificate of the Crime, Conviction and Sentence should be sent to the Regt. on the completion of the Sentence—indeed, in some Cases it is necessary to have a Certificate as to the endurance of the Punishment; after which in Felonies and Misdemeanors (except perjury) it has the effect of a Pardon, ([12]) and makes him a competent Witness.

Proposed.

Copy of Charges to Prisoner; and List of Witnesses.

A Copy of the Charge should be given to the Prisoner as early as possible, as well as a List of Witnesses for the Prosecution, in all practicable Cases. ([13]) He,

([11]) A Comg. Officer of a King's Regt. once asked me if they could give in Evidence a Conviction of a man of their Regt. tried for Theft in the Supreme Court at Madras, the man had been sentenced to Imprisonment, and his punishment being over he had returned to his Regt.—They wished to produce this Conviction against the man, if possible, as he was a notorious bad Character, and wrote to Madras to get a copy of the conviction; that was a Case in which, without it, there might have been no previous conviction to bring against him—and the man would thus go before the Court as if tried for a first Offence. It is well known that some men are constantly committing offences short of a Crime triable even by a Regtl. Ct. Martial—hence the use of introducing "Summary Conviction—Punishments."—*See Note* 2. p. 57.

Really if the object be to mete out Punishment—and it be admitted that you can, now, on a trial for "Mutinous, &c. Conduct," give in a previous conviction for "Theft from a Comrade" or the like—why not give it in a Case "of Theft" when tried by a *Civil* Court—or, if tried for a *Civil* Crime, why not give in previous Convictions? I cannot see the force of the distinction.

([12]) 9 Geo. 4, c. 32, s. 3, 4 and 9 Geo. 4, c. 74, s. 35.

([13]) G. O. C. C. 23rd Sept. 1826. A man kept 11 days in confinement and 4 days after his trial was over—the sentence never properly made known—batta due—applied for without success.

at the same time, should be called on for a List of his Witnesses, if any are to be summoned by the J. A. The same course applies to *all* Courts. The duty in both the above Cases, as the Order states, devolves upon the J. A. if it be a trial by a *General*, and upon the Staff Officer or Adjt. if by an *inferior*, Court-Martial. (14) If a King's Officer, the Charges are usually Signed by the Adjt. Genl. to H. M.'s Forces in India. (15)

WITNESSES.

I have stated above that a List of Witnesses should, in all practicable Cases, be given to the Prisoner. Besides the affording the Prisoner a knowledge of the Persons who are to give Evidence against him,—there may, in some Cases be an object in knowing, or inquiring into, the Characters of the Witnesses. I mean not in ordinary Cases, or where Officers and Men of honor are the Witnesses—(16) but where Witnesses are to come from a distance, and are unknown to the Prisoner, time may be required; even by the Witnesses themselves. List of.

Where Witnesses are at a distance, there is "an Examination *de bene esse*—that is, Interrogatories by the party, to the parties transmitted to, and the answers Examination de bene esse.

(14) Where a Court remarked that the Officer had not received a copy of the Charge, the Comr. in Chief observed that, the *Substance* of the Complaint should have been made known to the Officer: the Charges being put in form afterwards. G. O. C. C. 11th April, 1827.

(15) By the Dy. Adj. Genl. (K. T.) Madras; and by the B. M. K. T. at Bombay. In the Case of Capt. A., 11th L. D., the Charges were signed by the Company's Adjt. Genl.—the Prisoner in his *Plea* objected that the Charges should be signed by the King's Adjt. Genl. The Court overruled the objection. The witnesses for the defence had been examined. A Letter was produced by the President enclosing the Charges signed by the Adjt. Genl. (K. T.)—both were read—Capt. A.—requested the Trial to remain as under the former Charges (they were the same Charges.) The Court decided to let the Case stand, G. O. C. C. 3d (King's 1st.) Feb. 1834. It is to be remarked that there was no legal objection to be made; for one Adjt. Genl. is as much the Comr. in Chief's Staff as the other.

(16) In the Case of High Treason or Misprision thereof, a list of all the witnesses is given 10 clear days before the trial (excluding Sundays) by Stat. 7 Ann. c. 21.

taken before a Justice of the Peace." ([17]) I think the J. A. or the Comg. Officer of the Station should do so when there is no Justice of the Peace or Magistrate *at* the Station. ([18])

PROSECUTOR.

Who is to be.

1.—It is directed that—" If the Crime be of a *general nature*, and not an *injury* to an *individual*, to call on the person preferring the Charge to appear as Prosecutor; and the J. A. is to submit the expediency, generally, of the Officer Comg. the Corps or Depmt. to which the Prisoner may belong, being required to sustain the Prosecution." ([19]) I know that in H. M.'s Service the Captain of the Troop or Company, or the Adjutant is usually the Prosecutor at District or Regimental Courts-Martial—but, then, the Crimes before such Courts are inferior in magnitude to those triable before General Courts-Martial — and, besides, the persons tried by the former are always N. C. O. or Soldiers—while those tried by the General Court-Martial are, at times, Commissioned Officers. I am not going to make a frivolous objection on the score of the Rank of the parties arraigned—but I address my observations to *all* Cases before *General* Courts-Martial —*first*, as to Crimes of a *general* nature.

Crimes of genl. nature.

2.—The Crimes presupposed, are those affecting Discipline—" to the Prejudice of Good Order and Military Discipline"—or " Omissions—Commissions —Neglects, &c." or some Conduct " Unbecoming the Character of an Officer and (*or*) a Gentleman." In

([17]) " In the event of difficulties existing to the *detention* of a witness, the J. A. shall propose the Evidence required being taken in the presence of both parties, before a Magistrate; and it is understood, that the necessity of the above Cases being established, and the Court-Martial being satisfied, that the Consent of both parties had been obtained" (*should be in writing*) " such Evidence may be legally received on the trial. " Circular No. 2185. J. A. G. 22nd Novr. 1830, by order of Govt. I think such should be legislatively provided for.

Proposed.

([18]) At Kurnal for instance, the Magistrate and Collector resides at Paneeput, 20 miles off.

([19]) Circular J. A. C.'s Office, No. 178, 15th June, 1832.

such Cases surely the *J. A.* ought to be competent to be the Prosecutor, as being, usually, of some 15 or more years standing, he must possess a sufficient knowledge of Military Duties, and of the common Rules of Evidence which apply to such Cases. (20) We see that, in the Case of the inferior Courts, there is a public Prosecutor, by *Custom*; in some Regts. he is the Captain—in others, the Adjutant of the Regt. (21) **J. A. should be.**

3.—In the Case of Crimes committed by Officers or Soldiers, such as Murder, or other Crimes of a Civil nature, I do not see how the Comg. Officer of a Regt., generally speaking, can be the proper person to be the Prosecutor. He cannot be acquainted with the mode of proceeding in such Cases. There can be no facts within his knowledge which have not either been recorded on the Proceedings of the previous Court of Inquiry—or which he cannot communicate to the J. A.—but supposing, as is sometimes the Case, that, not being used to the Proceedings of Genl. Courts-Martial (22), the Comg. Officer may not recollect at the moment, or before the trial so as to put the J. A. in full possession of the Case, as I have known;—then, let him be made a Joint-Prosecutor, at the discretion of the J. A. But even Joint-Prosecutors are often inconvenient; for though they are not to act against the opinion of the J. A. (23), every one who knows any thing of the Conducting the Proceedings of a General Court-Martial is aware that, though the Joint-Prosecutor is to be governed by the Advice of the J. A., still, if he proposes a measure which the J. A. does not approve of, there may be delay, the Court must determine the point, if the *Joint*-Prosecutor will not yield to the J. A.'s Opinion; and besides he has his Ques- **Crimes of Murder, &c.**

(20) In H. M.'s Service an Officer of 7 years Service, is eligible to be a Major; and all Officers are expected in 3 years to understand the duties of a Captain.

(21) It were better to be the Captain of the Company; because to make the Adjt. the *general* Prosecutor may very much interfere with his other duties—and the Captain of the Company more minutely knows the Case of the particular man to be tried. **Proposed.**

(22) I knew a Case 16 years ago of a Lt.-Colonel who had been 40 years in the Army, and had never been a Member of a Genl. Ct.-Martial.

(23) Lr. Actg. J. A. G. No. 483—19th Sept. 1822.

tion to put as well as the J. A. which occasions a double examination at times! The Joint-Prosecutor should, in fact, be, publicly, declared to be *merely* present to aid with his *knowledge* of facts, or to *suggest* only; but not to combat the Decision of the J. A. after he shall have assigned his reasons for adopting a different course.

Mixed Cases. 4.—But, if we take the Case of an Officer, who has been at variance with his Comg. Officer, as one Case—we will suppose a disobedience of his Orders—here, the Proofs are simple. If the Case refers to a mixed question, in which there may be concerned several Officers, I do not see why the Comg. Officer should be the Prosecutor and Champion for the whole—the Court of Inquiry, and other means, are in the hands of the J. A., who not being a party, and having no interest in the Issue, must be unprejudiced against the Officer to be tried—there are in his breast, no feelings of Party or Bias against the Person to be tried—no Regtl. grievances of long standing rankling in his mind—he comes forth as the public Prosecutor—to see Justice done between the accusing and the accused. The Comg. Officer, whose Orders have been disobeyed—whose authority may have been called in question—whose Impartiality may have been impeached, comes into Court in many Cases, not with an unprejudiced mind—and until we can school the human mind to better thoughts and better actions the case will always remain so. ([24])

Private Injury. 5.—If we examine the last Case, being the second branch of the "Circular" above quoted—that of "an *injury to an Individual.*" Here the argument against *the Individual* being the Prosecutor is so adversely strong, that I cannot conceive that any doubt can exist, but that he is the last person to advocate his own Cause. He comes into Court with the full belief that he is an injured man, and no doubt he is, or the trial would not be ordered, ([25]) but, with a strong belief in favor of his own Cause, he is very likely to

([24]) I speak of Cases generally, not referring to any one Case.

([25]) Even feelings, which time might have softened down are revived, and the very circumstance of the order for the trial, puts in activity all the Private Prosecutor's ill-will towards the accused.

be led away by his feelings, and to lose his judgment, and to view the Case as one entirely of a *personal* nature — whereas, every *private* injury against the Character of the individual is brought before the *Mily.* Court as some misconduct, which affects the Character of the accused as an Officer or a Gentleman. Now, suppose the Officer who exhibits the Charges to be a most talented Man, even to be familiar with the Proceedings of Genl. Courts-Martial — to be well versed in the Rules of Evidence, and in every way, were the Case not his own, as fit as the J. A. or even more so, to sustain the Prosecution; still there appears to me to be a strong objection to his being the *Sole-Prosecutor*—let him if necessary, be the *Joint*-Prosecutor. ([26])

J. A. Public Prosecutor.

6.—The J. A. G., or his Deputy, used to be the Public Prosecutor before Genl. Courts-Martial—the words were "*shall prosecute in our name,*" and even at District Courts-Martial each King's Regt. had its *J. A.* to conduct the Proceedings ([27])—I regret much that any Person but the J. A. should be the *Sole*-Prosecutor. We have not in the alteration copied from the Common Law, nor from the *Civil* Courts. With

([26]) There are at times, points which may strike the Officer sending in the Charges, or questions may arise in the course of the Trial, which before did not occur to him and may result from answers to the Deft's. Questions—therefore, his being a *Joint*-Prosecutor is so far useful. He can as such suggest any Questions, and could do no more were he *Sole*-Prosecutor. If he has any proper course to adopt, which the Court may think right—the J. A. must yield, to the Court—so that there can be no injustice!

([27]) The President was in the year 1830, first directed to conduct the Proceedings of District Courts-Martial.

Capt. Simmons, p. 152, states that "previous to the existing Articles of War, it was provided, that the J. A. G., or his Deputy, should prosecute in the King's name. By the Custom of the Service, the actual duties of Prosecutor more frequently devolve on the individual originating the Charge, or on a Staff Officer ordered to perform the duty; it is, however, always considered to be at the Suit of the King."

As to H. M.'s Service, it appears to me that it would be advisable to re-appoint an Officer as J. A. to the Regt., as there would be an inducement to an Officer to Study; and to be useful in many Cases.

The Genl. Regns. and Orders of the Army, p. 199, declare that "it is incumbent on all Officers to apply themselves diligently to the Acquirement of a competent knowledge of Mily. Law, and to make themselves perfectly acquainted with all Orders and Regns. and with the Practice of Mily. Cts." The expense of the J. A. was very trifling, and every encouragement should be given to Officers to act as J. A.

a few very rare Exceptions ([28]) no man ever thinks of being the Prosecutor in his own Cause in a Court of Law. At General Courts-Martial, a private Prosecutor and Comg. Officer stands in the awkward position—if an Officer of his Regt. is to be tried,—of pressing the Prosecution against an Officer under his Command; and if any adverse feeling did exist between the two, such a proceeding is calculated to make it lasting.

No Interest. 7.—If we examine the Case of the J. A. as Prosecutor, we see in him no interest to favor either side—his Course is straightforward—he acts, as it were, as Moderator between the parties. He will not try to aggravate the Prosecution by bringing forward extraneous Matter, or using intemperate language. ([29]) Besides, we must well know that the Prosecution has to undergo, at times, the Ordeal of *two* parties examining—cross-examining, &c. In fact it is one of those Cases in which, "in the multitude of Counsellors there is *not always* Wisdom." I therefore most strongly recommend that the J. A. should be the Prosecutor, and that, in necessary Cases, the *Joint*-Prosecutor should be appointed, to give *information*; but to act perfectly under the Advice of the J. A.

The Place of the Assembly of the General Court-Martial.

The Place of the Assembly of the Court is usually at the Mess-Room of some Regiment, agreeably to the Orders of the Service. ([1]) And has been held at the

If changed. President's Quarters ([2]) when he has been too unwell

([28]) Mr. Perry, Editor of the *Morning Chronicle*, Mr. Hone—and other Cases: lately at Bombay, the Editor on a Prosecution for a Libel by the Comr. in Chief, at Bombay.

([29]) See Lt.-Col. Johnstone's trial in 1811—G. O. H. G. 12th March 1816—G. O. C. C. 21st November 1820—and 25th March 1830, and many other Cases—I have known an instance of a J. A.—being censured in G. O. (1830), for intemperate Conduct and aggravating the Prosecution; I think not more than one or two instances in 30 years.

([1]) G. O. C. C. 14th Dec. 1822.

([2]) G. O. C. C. 24th October, 1827.

to move from his Home. And may be held at any Place appointed by Authority. (3) It has never been determined by Authority, whether a Court could by its own Order, adjourn and meet at any other Place; therefore the Custom is, to apply for leave to meet at a more convenient Place.

Jurisdiction of a Genl. Court-Martial.

As to the Prisoner, there should, before trial, be no doubt as to his amenability to trial, either as to the time limited by the Mutiny Act, nor as to the Jurisdiction over him, arising from any other circumstance; such as whether liable to trial under the Mutiny Act, or Articles of War, or any other legal objection to trial exists! Amenability. It has been recommended after the Order for the Assembly of the Court, and the Warrants have been read, that the Charges should be read. (4) If there should be any want of Jurisdiction the defect can thus be remedied, as the Prisoner has not been arraigned. (5)

Challenges.

1.—It is universally admitted not to be the Custom of the Army to allow of Challenges, at Regtl. Courts- No Regtl.

(3) On the Trial of Capt. M., 35th N. I., Meerut, 27th Jany. 1827, the Court was held first at the Soldiers' Library—but, being found inconvenient, it was notified that the Court would be held at the Mess Room of H. M.'s 16th Lancers.

(4) "If not embodied in the President's Warrant; as it formally brings before the Court the *Matter* on which the Court are about to swear expressly that they will duly administer justice." *Simmons*, p. 157. On the trial of Lt.-Genl. Whitelocke, Lt.-Cols. Johnstone, Quintin, &c. the Charges were embodied in the Warrant to the President, which was necessarily read before the Court was sworn.

(5) It was said by the J. A. G. on Lt. Genl. Whitelocke's Trial, printed Trial p. 797—"it is perpectly understood, that, till the King's Warrant is signed, there is the power in the Crown, or in the party who brings forward the prosecution, to alter those Charges." I think till the Arraignment, and should be so settled; and if there does appear any thing illegal the Court are bound to adjourn and to bring it to the notice of Competent Authority. I am speaking of extreme Cases—the J. A. should be well informed on this point before trial. Proposed.

Martial. It is said that they are allowed at District Courts-Martial. ([6])

2.—With regard to General Courts-Martial, it is singular that no Legislative Provision has been made. The Analogy between the *Civil* and *Mily.* Courts does not always hold good: for those which will apply to the former, do not to the latter; there are Cases in the Mily. Courts which could never arise in the Civil

Crown and Prisoner.

Courts. Both the Prosecutor (Crown) and the Prisoner have the Right of Challenge, but the question is seldom put to the Prosecutor, in Mily. Courts. ([7]) Where a Prisoner objected to the Captain of his Company being a Member, which was overruled by

Of Captain.

the Courts, such was disapproved of, but not because he was the Captain of the Prisoner's Company. ([8]) In Mily. Cases, it often happens that the Officers of the Prisoner's Regt. may know that there is evidence to convict him, but, it is clear that the Cases of insubordination, or of riotous conduct in Barrack—Drunkenness and the Crimes which arise from it, are usually, so clear in proof, that in such Cases a Challenge of one or two Members is of little avail; as three-fourths of the Members generally agree as to the finding in such Cases—and usually as to the Sentence.

([6]) Evidence M. G. Sir J. Macdonald, Adjt. Genl. H. M.'s Forces in his Evidence before the Mily. Commission (1835)—I recollect the Challenge being allowed at a Genl. Regtl. Court-Martial; which represented the present District Court. *Capt. Simmons*, p. 65, states as to *Regtl.* Courts, " it is not usual to ask the prisoner whether he has cause of Challenge; though if he offer such as to render an Officer ineligible as a member, it must necessarily be entertained by the Court; or its proceedings may be vitiated. The G. O. C. C. 6th May 1820, direct the Prisoner to be tried by *Regtl.* Ct.-Martial, to be informed before trial who are to be the Members, and if he can allege any valid objection he is to make it before the Court is sworn, but, it is not the Custom to ask him in open Court if he has any objection. It should be stated by authority whether or not Challenges are to be allowed at the inferior Courts. Sir J. Macdonald stated

Proposed.

" I cannot trace, an instance of a challenge, in the Case of a Regtl. Court-Martial, being either made or admitted."

([7]) In the Case of the Trial of a Native Officer on the 15th Oct. 1814—the question was put to the Prisoner and Prosecutor.

([8]) G. O. C. C. 6th May, 1834, and the Sentence was not confirmed. As the Captain, who had previously examined the witnesses on both sides, conceived the Case was more fit for a *Genl.* than a *District* Court-Martial—Thus, presuming he had formed an opinion as to the Prisoner's guilt and the necessity for a more severe punishment.

3.—In the Case of the Comg. Officer of the Prisoner's Regt., I have known the Challenge made and rejected. (9). The Prisoner conceived that his Comg. Officer, who, as all Comg. Officers do, had inquired into the Case before it was brought to trial and had held a Court of Inquiry—was the Prosecutor as well as his Comg. Officer, which characters of course could not be sustained while he was a Member. In the Case of District Courts-Martial, the Comg. Officer of the District or of the Prisoner's Regt. is not to be the President (10) Where a Comg. Officer had himself sent in a Charge against an Assistant Surgeon of his Regt. for disobedience of his (the Lt. Col.'s) Regtl. Order, and was appointed President, and his Challenge was over-ruled—the Comr. in Chief disapproved of the Sentence, (11) as well as of the appointment of the Comg. Officer as President. The objection, therefore, was not merely to the President being the Comg. Officer of the Regt. A Comg. Officer must, in most Cases, whether the person to be tried be an Officer or Soldier, know a good deal regarding the Evidence to be produced: but his bare knowledge of the Evidence should not, in ordinary Mily. Cases, prevent his being a Member; as the public Service may, at times, require his being a Member, or even the President. Comg. Officer.

4.—The most important question is, whether an Officer who has been a Member of a Court of Inquiry held on the Prisoner's Conduct may or not, also, be a Member of the Genl. Court-Martial held to try him— Member Ct. Inquiry.

(9) Private Midwood, 11th L. D., tried in August 1834, at Meerut.

(10) Warrant to Genl. Officers, and Circular No. 658, 24th March, 1830—If the Comg. Officer is not to be the President of a *District*, neither should he, for the same reason, be a *Member* of a *Genl.* Court-Martial—for he has in both Cases only one Vote.

(11) To be "Dismissed—*Disapproved*"—"His Excy. the Comr. in Chief Genl. Sir H. Fane "deems the Prisoner's objection to the partiality of the President of the Court ought to have been attended to, and especially when the President declined to deny the expressions alleged to have been previously used by him, with reference to the Prisoner—expressions which, if justly charged, undoubtedly gave to the Prisoner a fair ground to plead his fear of the existence of prejudice on the part of the President. It was very indiscreet (considering the nature of the charge) to have nominated the Lt.-Col. of the Regt. to which the Prisoner belonged, to be the President of the Court to try him."—G. O. K. T. No. 923, 1st Oct. 1835.

On the trial of a Native Officer who objected to another Native Officer belonging to his Regt. being a Member, the J. A. recommend that the Challenged Member should withdraw—as he had been a Member of the Court of Inquiry previously held on the Jemadar's Conduct. ([12]) There have been many similar Challenges —it therefore, should be settled by Legislative Enactment, whether the merely having been a Member of the Court of Inquiry; or having been a Member and having given an opinion, shall govern the Case, in *appointing*, such Officers to be Members of the Genl. or other Court-Martial; ([13]) for if Officers, likely to be objected to, shall be Challenged, and the Court be reduced below the legal number of Officers, there must be an Adjournment and Delay—I think the Rule might be thus framed.

([12]) Tried at Kurnal, 30th August 1826—G. O. p. 401. The Jemadar also urged that there had formerly been a quarrel between him and the Member. And on the Trial of Serjt. Wilks, at Landour, on 20th Oct. 1829, the J.A. challenged two Members who had been President and Member on the Court of Inquiry held on the Prisoner's Conduct, and submitted that they should withdraw, to which the Court acceded.

([13]) The Analogy between a Grand Juror and Member of a Court of Inquiry does not hold good in all points—the former hears only the Evidence for the Prosecution—the other, often, the Evidence on both sides—the Grand Juror gives an opinion, the Member of the Court of Inquiry does not always—So that the latter has more knowledge than the former—the former hears the Evidence on one side, on Oath —and merely gives an opinion that there is "a true Bill"—sufficient evidence for a trial—the latter does not hear the Evidence on Oath, and the Deft. may urge nothing at the Court of Inquiry; and may not even cross-examine the Witnesses produced against him; reserving himself for the Trial.

But, though there can be no doubt that where an opinion *has* been given; that such Members so giving an opinion should not be Members of the Court-Martial, still in this Case, as in that of the Grand Juror, a *Majority* only may be of opinion that there are grounds for trial—In the Case of the Grand Juror, it is not known who dissented—In the Case of the Court of Inquiry though it is usual for all the Members to sign the Court of Inquiry [so in the Case of *Private Somerville*, (Scot Greys) Special Court of Inquiry, conducted by the J. A. G. (Rt. Hon. R. Grant)—August 1832. See P. C. M., &c. 1834, p. 142] still a Member dissenting from the opinion of the Majority may *record* his dissent (see p. 141 Note 35—P. C. M., &c. 1834)—Now, the dissenting Members would not be objected to by the Prisoner, but might be by the Prosecutor (Crown), so that as in the Case of the Grand Juror he is ineligible; so should be the Members of a Court of Inquiry upon the same reasoning—my object is uniformity of system—the rule is not the same in all Divisions of the Army.

5.—"That all Challenges which are allowed by Law,[14] shall be allowed at General Courts-Martial, provided that no Officer who has been a Member of a Court of Inquiry held on the Prisoner's Conduct—shall, if he has given an opinion, be a Member of the General Court-Martial to try the said Prisoner for the same Offence. If such opinion shall not have been given, the Member of the Court of Inquiry is not to be appointed a Member, unless the exigence of the Service render it necessary—in which Case the Prisoner will still retain his Right of Challenge, upon grounds to be stated and to be decided by the Court.[15] Provided, also, that in an Appeal by a N. C. O. or Soldier from a *Regtl.* or *District*[16] to a *Genl.* Court-Martial no Member of such *Regtl.* or *District* Court shall be a Proposed.

[14] The legitimate Causes of Challenge are, that the person has been heard to express an opinion of the Prisoner's Guilt; (or innocence as far as the Crown, &c., is concerned) or that from age, (70 years of age), deafness, or other infirmity, he is incompetent to discharge the duties of a Juror, has been on the Grand Jury P. C. M. (Hough) p. 943, Note 81, 1825.—"Tampering with Witnesses—or declaring the Prisoner deserves to die,"—Case of an Officer, tried for Murder, in 1718, at Gibraltar, challenge allowed. *Simes's* Mily. Lib. vol. IV. p. 64. "Challenges have been reduced by Lawyers to 4 heads *propter honoris respectum; propter defectum; propter affectum; and propter delictum.*" Simmons, p. 161 (1835.)—"The cause of exception of *kindred*, though good cause of Challenge against a *Juror*, is not an objection to the *competency* of a *Witness.*" *Phillips'* Law Evid. vol. I. p. 16.

[15] Several Proceedings have been disapproved of in consequence of a Challenge having been over ruled, when, perhaps, the Member Challenged was only one of a Minority of 3 or 4 as to the "Not-guilty," or as to the highest sentence—I think if, in such Cases, the J. A. were directed to send the number of the Majority as to a Finding of "guilty"—and the number who concurred in the Sentence—it would be seen that the Challenged Member's Vote could not, in many Cases, have affected either question. In the Case of a Sentence of "Death," where 10 out of 15 (two-thirds) must concur, if there were only *ten* concurred therein; then if the Court had over-ruled the Challenge there might be a doubt—but if *eleven* concurred and only one Member challenged, there could be no doubt!

[16] Clause 16 Annl. M. A. only uses the words "unless, &c. appeal from a *Regtl.* to a Genl. Court-Martial."—I think the words "*or District*" should be added to Clause 16—the reason holds equally good in both Cases—both Sentences are approved, &c. by an authority inferior to that of the Comr. in Chief—and Challenges are allowed of at District Courts Martial (*see Challenges.*) Proposed.

Member of the Genl. Court-Martial. Provided, also, that the Officer Comg. the District, or the Prisoner's Regt., or the Captain of the Troop or Company to which he belongs, may be President, or Member of any Court-Martial to try the said Prisoner, if such Officer be not legally disqualified—and provided that if appointed the Prisoner may Challenge such Officer; such Challenge to be decided by the Court before which it shall be made."

6.—The J. A. has the right to Challenge as well as the Prisoner, and several instances of his so doing have occurred. (17) I think if a List of the President and Members was given to the J. A. and to the Prisoner, a few days before the Trial, many Challenges may be avoided—and much inconvenience be prevented: for, where there is no want of Officers, it would be better if a really valid objection could be made known to the Officer ordering the Trial; and be settled, without a Challenge in open Court. (18) In one Case, the Officer tried, had the President and all the Members from different Stations—and not one from the Station to which he belonged: (19) as the Matter to be investigated, had been long the subject of conversation at the Station.

List of Members before Trial.

(17) And on the trial of a Captain of the Madras 7th Light Cavy.—Confirmed by the Comr. in Chief (Lt. Genl. Sir R. W. O'Callaghan) 6th Feb. 1832—H. E. observed two Officers detailed as Members of the Court, subjected themselves to a Challenge very properly made by the J. A. on the part of the Crown, as *private Advisers, Counsellors* and *Associates* of the Prisoner to be tried up to the very day of Trial, one of them had the discretion to request to withdraw; the other, however, thought fit to persevere, until removed by order of the Court, and was desirous, under such circumstances, to "*swear to administer Justice, without Partiality, Favor, or Affection.*"

(18) On the Trial of Lt.-Col. Bell, at Madras, 1st Nov. 1809—he objected to an Officer—and appealed to his delicacy, not doubting his Honor—the Challenged Member did not admit the force of the objection—Lt.-Col. B. consented to withdraw the objection—but the Court admitted the validity of the objection. He was afterwards found to be a material witness for the Prosecution.

(19) G. O. C. C. 26th June, 1835—at Meerut.

Assembly of the Court—Members not Present.

All Members appointed in Orders must attend, and if they are not all present, the Court should adjourn. (1) The non-attendance is a disobedience of Orders, and liable to trial and punishment. Where on Service, on a Revision of the Finding and Sentence of a General Court-Martial, all the Members were not forthcoming, the Court proceeded with the Revision; there being the legal number present. (2) But the rule is, that if a Member cannot attend, a Medical Certificate should be forwarded to the A. A. G. or other Station Staff; but if the Court has assembled, to the J. A. (3) Medical Certificate.

Reading of the Orders, Warrants, &c. for the Assembly of the Court.

It is not necessary to do more than record that the Orders for the Assembly of the Court were read, and not the words of the Orders. (4) The Warrants are read and recorded as having been read—see *Jurisdiction ante.*

Charges Read—Plea of the Prisoner.

The Charges being read, the Prisoner is called upon to plead—the usual Plea is "not guilty"—if he refuse

(1) On the Trial of Asst. Surgeon H., 2nd or Queen's Royal Regt. a Member was absent "without any reason being assigned"—H. E. the Comr. in Chief in India remarked—that "the Court ought to have been adjourned until Capt. C.'s absence had been perfectly accounted for; and the cause of his absence, and the reason for proceeding without his being present, ought to have been recorded"—G. O. K. T. No. 923—1st Oct. 1835.

(2) The Case of "Deserters to the Enemy" tried at Bhurtpoor—See G. O. C. C. Jany. 1826, pp. 29, 35. The fact was the Divisions had changed ground, and some Members did not know of the order to revise in time. The Court consisted of 13 Officers, and Bhurtpoor being *out* of the Company's possessions, a less number of Officers formed a legal Court.

(3) A List of the Members should be sent to the A. A. G. or Station Staff 2 or 3 days before the Trial; as at large Stations, delay ensues if not sent before,—that the J. A. may have the List in time.

(4) Circular Lr. Offg. J. A. G. No. 476, 12th Sept. 1835.

to plead, the Court may Order a plea " of not guilty" to be recorded. ([5]) It is usual to advise a Prisoner to plead " not guilty." ([6]) If the Prisoner plead a

Misnomer.

" Misnomer," the Court may ask the Prisoner what is his real name, and call upon him to plead to the amended Charge. ([7]) The J. A. should, always, before the Charge is read, say to the Prisoner, " are you properly described in the Charge," reciting to him his name, number, and designation. If the Prisoner should

Mute.

stand mute by " *the visitation of God*"—it would be wrong to proceed with the trial, till the fact be established whether it be true or not. ([8])

([5]) 9 Geo. 4, c. 74, s. 15.

([6]) Some are of opinion that the Plea of " Guilty" if made, should be recorded. But *Mily*, Courts are ordered to take Evidence—Genl. Regn. and Orders, p. 202, so that the Case is different from that in a Court of Law, where they proceed to pass Sentence, or close the Trial at once—the plea, " Guilty" if recorded, does not close the Proceedings of Mily. Courts.

([7]) 9 Geo. 4, c. 74, s. 11. Thus where the Prisoner was styled *John* and said his name was *James*—the J. A. altered it to *James* in Court. G. O. C. C. 10th Oct. 1832.

([8]) See, Case of Private Ralstone, H. M.'s 69th Regt. G. O. C. C. 9th Nov. 1818, who pleaded " *Insanity*"—the Comr. in Chief ordered a Medical Committee to be assembled. It is best for the Court to call before them the Medical Officer of the Corps, and even any other Medical Men, or others, who can decide the point. *Capt. Simmons*, p. 179 (1835) says " should a Prisoner stand mute by the visitation of God, though the Court proceed to trial as if he had pleaded not Guilty; yet it is a point undetermined, whether judgment of Death can be given against one who had never pleaded, and who can say nothing in arrest of judgment." 4 Black. Com. 524, but, let me observe that—

" By the Common Law, if it be doubtful whether a Criminal who at his trial is in appearance a *lunatic*, be such in truth or not the fact *shall* be investigated, (1 *Hawk. P. C. c.* 1, *s.* 4.) And it appears that it *may* be tried by the jury, who are charged to try the *Indictment !*" (1 *Hawk. P. C. c.* 1, *s.* 4, *Note* 5) " And if it be found that the party only feigns himself mad, and he refuses to answer or plead, he shall be dealt with as one who stands mute." (1 *Hawk. P. C. c.* 1, *s.* 4.) So that the Court should adopt the course above stated, which saves time; and it would indeed, be useless waste of time to take Evidence as to the *Crime*, till the question as to whether " *compos*," or " *non-compos*," be established; whether, in fact, he is a being responsible for his Actions. If the Court find him " *non-compos*"—they should report the fact, and the Genl. or other Officer would place the Prisoner under proper care; and report the Case to the Adjt. Genl.

WITNESSES WITHDRAW—TILL CALLED.

It is usual to direct all Witnesses to withdraw, till called into Court to be examined. If any disobey the Order (which the Adjt. of the Day should prevent) it will always be a question with the Court, whether, according to the nature of the Evidence, such a Witness shall or shall not be examined. If a spectator be in Court during the trial, and without previous notice, is desired to be examined by either party; his having been in Court, unless premeditated, should be no bar to his examination. (9) But, if the Court see reason to object to his examination; they should record their reasons for so doing.

PUBLICATION OF PROCEEDINGS.

There has never, I believe, been a *Prosecution*, for the Publication of the Proceedings of any Court, notwithstanding a prohibition to the contrary; because, as Courts are open to the Public, it has been conceived that more real Justice than Injustice does result from their Publication. The only notice I am aware of has been by *Fine* imposed (10)—but Military Courts have

(9) The not retiring is a *Contempt* of Court; but as the Courts of Law have only within the last 20 or 23 years ever, and by application of the parties, ordered the Witnesses to retire; and sometimes, declared that any found in Court should not be examined—it is in fact, not a *Law*, but the Practice of Courts, when asked by Counsel, &c.—still, the exception to a witness being rather to his *Credibility* than to his *Competency*—I would not reject such a Witness—except in extreme Cases—It can always be made to appear, what *Weight* is due to his Testimony—by asking—"Have you not heard such in this Court," and "did you ever hear of it before, &c."

(10) Mr. Christian in his Edition of Blackstone, vol. 3, p. 151, Note 6, observes "it is not a libel to publish a true account of the Proceedings of a Court of Justice."

In the Case of Mr. Clement, Proprietor of the *Observer*, Sunday Newspaper, for publishing the Proceedings on *Thistlewood and Ings*, while other persons remained untried—and contrary to the order of the Court and to the obstruction of public justice (Old Bailey—C. J. Abbott) the Court imposed a Fine of 500£—on 29th Jany., 1821 the Atty. Genl. showed Cause against the Rule obtained in the Court of K. B.—the Court unanimously refused the Rule, and gave as their opinion that the Fine was legally imposed."

no such Power. There may be great good arise from the publication ; but, then, they should be without any Comments, till the Court have closed their Proceedings. ([11]) I hope the time has arrived, when questions are judged by all Courts according to the real merits of the Case ; and upon the Evidence alone. Reporters have often been allowed, but cautioned not to publish till the Trial should be over.

Reporters.

Counsel for the Prisoner.

It is the Custom of the Army to allow a Prisoner before any Court to have an Adviser, and what is granted to the Officer is equally allowed to the private Soldier. ([12]) I do not mean to advocate Litigation on the part of any one; but, if a Soldier requires the Aid of a Comrade, let him always have it. The J. A., or Court will always prevent any improper interference taking place. ([13])

To all Prisoners.

During the above Trials it became known that one of the witnesses for the Prosecution was an *informer* ; and facts were disclosed, to prove him wholly unworthy of all Credit.—See Edinburgh Rev. No. 79, p. 204. See P. C. M. (1825) p. 446-7.

([11]) On the Trial of Col. Dennie, H. M's 13th Light Infy. he asked leave to publish the Proceedings daily—the Prosecutor objected ; and the Court refused permission—the fact is, the Court could not give permission.—The arguments used against the publication are two, chiefly—1st, that the evidence given by witnesses on a trial may be read by those to be examined in the same trial, or other similar trials pending ; but, I think, a little experience will prove, that any one can detect evidence given under such knowledge ; 2ndly—As the minds of the Members of the Court, are liable to a bias from observations made on evidence, or exaggerated Statements, Remarks should not be made pending a Trial ; but, if made, they cannot influence the minds of the *Majority* of the Court—and, at the present day, Members judge upon the Evidence only—See *Defence*.

([12]) See " Counsel for Prisoner"—and " Amicus Curiæ," the former substituted for the latter.

([13]) There are usually some who are termed " Lawyers" in every Regt., but these men often do the Prisoner more harm than good. I argue for the use, not the *abuse* of the privilege. It has been long agitated to pass an Act to allow of Counsel to all Prisoners tried for all Criminal Offences—the Act will doubtless be passed—as the Anomally (which Blackstone reprobated) should not exist, that a subject may have Counsel in an Action to recover *Sixpence*, and to make a speech—but not when tried for his *Life !*

CONTEMPTS OF COURT.

In open Court are punishable by Mily. as well as Civil Courts. ([14]) But when a Mily. person is to be committed it must be by the *Court* and not by the *Sole* authority of the President. ([15]) With regard to persons of a *Civil* capacity, if they commit any Contempt of Court, they are liable to Fines and Imprisonment; ([16]) but, this must be effected by the Aid of the Civil Courts, on representation to, and through the Comr. in Chief. If such a person refused to leave a Mily. Court, and was interrupting their Proceedings, there can be no earthly doubt of the Court's Power to compel his leaving the Court, even by force. As to *Mily.* persons—the Officer should be placed in Arrest and the Soldier ordered into Confinement. ([17]) **Civil Persons.**

CHARGES—WHY SHOULD NOT BE READ TO WITNESSES.

Though Charges have been usually read to Witnesses at Mily. Courts, it is not the practice of Criminal

([14]) In the Case of Gunner Green, 1st T. 1st B.H. A., for having on his Trial "used menacing gestures to, and for gross disrespect to, the Court, in having, after having been repeatedly warned to be silent, and to conduct himself properly; made use of intemperate language, and interrupted the Proceedings;—the Court was cleared and ordered the J. A. to draw up a Charge to the above effect—the Court was opened —and the Charge read to the Prisoner—after passing Sentence on the Charge under trial (1 year's Solitary Confinement) the Court passed a Sentence of 500 Lashes for the Contempt—G.O.C.C. 12th July, 1827.

In the Case of Private Jas. Wilson, Eur. Regt. tried by a Genl. Court-Martial, before which he used highly disrespectful language—Charges were exhibited and he was punished for the Contempt—by a Sentence of Corporal Punishment in addition to a similar Sentence for the Charge (Mutiny) under trial—the Comr. in Chief disapproved of the double infliction; as, in fact impracticable.—G. O. C. C. 7th Oct. 1825.

([15]) G. O. C. C. 20th July, 1829—the 94th Annl. Article of War requires the President, in Case any Member uses any intemperate words, to direct the same to be taken down—and reported—the President should keep order; but every Act must be that of the *Court*.

([16]) 4 Black. 125.

([17]) Whether Witness, or Spectator, &c. As to any Member acting in Contempt of the Court, though Art. 94 does not point out more than the "making a report"—still, if a Member were outrageous, the Court must compel such Member, I conceive, to leave the Court and should adjourn.

Courts to read an Indictment, or any part of it to a Witness—and in Mily. Courts has been objected to by a J. A. ([18]) If improper in one Court, it must be so in another. It is calculated to put words into the mouth of a Witness. The better course is, to omit reading the Charge, and to ask the Witness such questions, as "were you on duty on such a day—if so where and what occurred?" ([19]) or "where were you on such a day." If an Officer be the Witness, questions may be easily put to lead to the Charges. And the examination by questions and answers is often the best mode. If there be a dull, stupid Witness, let him declare what he knows by narrative.

Not in Courts of Law.

Opening the Case for the Prosecution.

In ordinary Cases, there can be little need of any Address by the J. A., or Prosecutor—Where there are many Charges, or Counts, an Address is sometimes very concisely made to explain any thing which may be necessary as to the Order of taking Evidence; and it is best, when such be done, to introduce each with a few words of explanation ([20]) rather than to make one long Address—nor, need more words be employed in such a Course.

Order of Evidence.

A Prosecutor, sometimes disclaims any object but the good of the Service in bringing forward the Charges—the less said the better on such a subject; as the result will best prove the intention.

Temperate.

But, one thing is most clear, that no intemperate language should be made use of, or be allowed by the Court. Vituperation may prejudice the mind of the Court against the person who uses such language; while nothing but good Evidence, and clear reasoning applied to the Case, under investigation, will avail.

([18]) Private Richard Power, 31st Foot, tried for *Murder* at Meerut, 8th Oct. 1829—See G. O. C. C. 2 Nov., 1829.

([19]) And, if necessary "do you know the Prisoner."

([20]) A long "Opening Address" detailing facts relating to many facts is useless, as the Court will not recollect the particular part which applies to Charges investigated, perhaps, several days after the Address has been read.

Nor, should the time of a Court be taken up by a long Address, which, if it tends to prejudice the Court against the speaker, may injure the Cause of Justice. (21) The Address is not Evidence; it is *Evidence* upon which the Court are to decide! and "*a fluent elocution is not always a proof of intrinsic good sense.*"

Cases of Murder, &c.

When there is a Case of Murder or other Civil Crime to be tried, it becomes necessary that the J. A. (22) should inform the Court briefly as to the particulars of the Case; and such legal bearings of the Case as may assist the Court in eliciting the Truth—and, if any Witnesses are not forthcoming, or there be any want of the usual Evidence—to inform the Court the reason, why not producible, *(for Incidents, see Miscellaneous Matter A. B. C. at the end of this Work.)*

DEFENCE.

No Anger.

1.—There is nothing which tends so much to injure any Man's Cause as Anger; (23) therefore, in writing a Defence, I would strongly recommend every Officer if he writes his own Defence, or employs another, to be temperate in language—and to read it over carefully, before it is read in Court. It is obvious, that the object of a Defence is to answer an Accusation made; that Accusation unless supported by Evidence will fall to the ground—hence, the first consideration is *the* Evidence—and it has been remarked of a great Man (24) that he owed his rise to his tact in looking at the weak points of a Case, and labouring to convince the minds of his hearers on such parts as had the least Evidence to

(21) Hence do I object to private Prosecutors in general. If he is violent the Prisoner may with an ancient author say—"*If he proceeds to state what he pleases against me, he shall have something in return which it will not please him to hear.*"

(22) In such Cases the J. A. is the public Prosecutor—for I conceive the "Circular" (See Miscel. Matters—"*Judge Advt.*") to apply to *Mily.* Cases only—If he is to be Prosecutor in the most *difficult* why not in the most *simple* Cases—where good temper is so necessary an ingredient in the Character.

(23) It has been well said that "He who subdues his anger, conquers his greatest enemy."

(24) The late Rt. Hon. Mr. Perceval, who was bred to the Bar, and afterward Prime Minister.

support them; or which depended upon illustrative Argument: leaving the indisputable facts untouched. Hence, results the inference, that were the Officer knows that the Evidence is morally certain to be in his favor in certain points, he will act wisely in touching on them, though forcibly, at no great length—and give his chief attention to the weakest parts of his Case. ([25])

Chief points. 2.—There is, usually, a friend to assist the Officer or Soldier, ([26]) and the Officer has always the means of reference to the Evidence, if he has not himself, or by some friend, taken down the Evidence. He should note the Evidence on certain chief points, ([27]) and bring all the Evidence and Proofs *pro* and *con* to bear on the Case, and analyse it. To write a Defence from recollection, after reading the Evidence over hastily—may belong to great minds, and may often be done so as to give a pretty just representation of the facts of the Case, and, to casual hearers, be found to be a well written-reading-Defence—but, to the attentive ears of the Members of a Genl. Court-Martial, the *substance* will not do—they should have the *precise* words of quoted Evidence ([28])—besides it looks more honest to quote correctly; and misquoting, can deceive no one but the writer!

No attack on third persons. 3.—Care should be taken in commenting upon the Evidence, not to attack third persons not concerned in the trial; ([29]) and even with caution, on the evidence

([25]) As it is a well known Mily. Maxim, "to attack your enemy in his weakest point"—I cannot recommend a better rule to Mily. men.

([26]) See "Counsel for Prisoner"—Miscel. Matter, no man can take down the Evidence, and, at the same time, conduct his Case.

([27]) I must recommend the plan of marking the pages, and the letters A. B. C. &c., to such points—see p. 142 of my 3d Work (1834 Note 37.) Such little minutiæ may, to great minds appear trifling—but we all know that to unravel a Webb, we must proceed with care and attention. The human mind is more likely to recollect great and important, rather than minute, facts—but cases of moment, and great Cases are composed of a number of little parts, which form the whole.

([28]) As Members take notes, they cannot be deceived—and before passing a verdict, they can refer to the Evidence.

([29]) An Officer who, in his Defence, attacked the Brigadier Comg. the Station who was neither the Prosecutor or Witness in the Cause advancing against him "several deeply disgraceful imputations against his Character—the matter slanderously alleged against him being utterly unconnected with any question before the Court"—sentenced to be discharged G. O. C. C. 4th Sept. 1821 (former trial 25th July, 1821, on which he was acquitted—(See Case Book, (Hough) 1821 (pp. 459, 732.)

of the Prosecutor, or his Witnesses—1st, because, if either, as it is termed, "break down" in their evidence, it is easy to prove the fact by contrasting their evidence with that of others, and with those for the Defence—2nd, if you have any doubt as to their evidence, and do not feel strong in your own, it is doubly wrong to strengthen your adversary's Cause by an angry attack ([30]) by bringing *his* strong points into prominent notice. Nor should you travel out of your course, or state that which is either not capable of proof—unknown to any one—or beyond the bounds of rational belief.

4.—It has often been said, that a well written Defence will go a great way towards an Acquittal—and owing to a belief of the truth of this assertion—ingenuity and talents are called into action; as if the most able Defence addressed to the passions and sympathies of the Court, will countervail good, sterling Evidence. ([31]) I would advise no one to trust to such an "illusive dream"—but to make an honest Defence; and to trust to the justness of his cause. If the Case is a bad one, and it be a first fault ([32])—and, the Officer be young and inexperienced—or, has Character or Services to produce in *mitigation*—such an exhibition will more likely produce a favorable result, than any attempt, without strong grounds, to impugn the Credit of Witnesses; or to impute malicious or improper motives to the Conduct of the Prosecutor; or of harshness on the part of the superior Authorities. *(Consult also, Miscellaneous Matter at the end of this Work.)*

Honest Defence.

([30]) For as the Proverb says—"Patience, when too often outraged is converted into madness."

([31]) Undoubtedly, such men as Lords Erskine, Brougham; and many other eminent men would effect more than men of ordinary minds, but if the evidence be really, strongly and clearly against a Prisoner, they would fail, as to an Acquittal—they might decrease the damages in a Civil Action; and in Political trials, often succeeded in a way which cannot be effected at the present day—as Juries are more enlightened—talented speakers make more impression on the ears, than on the minds of a Jury; unless there be evidence in favor of their arguments; for rhetorical eloquence will not prevail; unless there be doubtful evidence: in which Case, the doubt is given in favor of the accused.

([32]) Though Lord Collingwood said he never pardoned a first fault.

CHARACTER OF PRISONER. ([33])

General Character. " In trials for Felony and High Treason, and in trials also for Misdemeanors, the Prisoner is always permitted to call Witnesses to his *general* character; and in every case of doubt, proof of good character will be entitled to great weight. The inquiry as to the Prisoner's general character ought manifestly to bear some analogy and reference to the *nature* of the Charge against him." ([34]) " For it is general character alone which can afford any test of general conduct, or raise a presumption that the person, who had maintained a fair reputation down to a certain period, would not then begin to act a dishonest or unworthy part. Proof of *particular* transactions, in which the Defendant may have been engaged, is not admissible, as Evidence of his *general* good character." ([35]) " In cases where

Intention. *intention* forms a principal ingredient in the Offence, a wider scope is allowed. On a charge of *Murder*, for instance, expressions of good will and acts of kindness on the part of the Prisoner towards the deceased, are always considered important Evidence, as shewing what was his general *disposition* towards the deceased, from which the Jury may be led to conclude, that his

([33]) See Miscellaneous Matter.

([34]) " On a charge for *stealing*, it would be irrelevant to inquire into the prisoner's *loyalty* or *humanity*; or on a Charge of high Treason (Murder, &c.) " it would be absurd to inquire into his honesty in private dealings."

([35]) " It frequently occurs, indeed, that Witnesses, after speaking to the general opinion of the Prisoner's character, state their personal experience and opinion of his honesty; but when this Statement is admitted, it is rather from *favor* to the Prisoner than strictly as evidence of General Character." And Lord *Ellenborough* said, " It would be dangerous as a precedent to permit particular instances to be given in evidence where there can havé been no *notice*." Ste. Tr. Ld. E. vol. 31, p. 190, and Ld E said on another trial—" General character is evidence, but whether this department may have been conducted in the best manner possible is nothing to the purpose. What was his general character for *integrity* is the question." *Do.*, p. 309; and to the *Q.* " Had you, any opportunity of seeing in what way he conducted the transactions of that Depmt."? *A.* " We had several transactions with him."——*Ld. E.* said " we cannot go into that."—*Q* "What was his general character and reputation?" *A.* "I have always heard it was very good in his official capacity" *Q.* " In your transactions did *you* find it so?" *A.* " Most perfectly so." *Do.*, p. 310.

intention could not have been what the Charge imputes." (36)

CHARACTER OF WITNESSES—CREDIT IMPEACHED.

1.—The party, against whom a Witness is called, may disprove the facts stated by him, or may examine other Witnesses as to his general character. To impeach the Credit of a Witness, you can only examine to his general character, and not to particular facts. (37) By Witnesses.

2.—In the case of the *incompetency* of a Witness owing to infamy of character, and which may not be known till *after* he has been examined, it is declared that—" the *Conviction* of an infamous Crime, followed by *Judgment*, disqualifies a Witness from giving Evidence in Courts of Justice." This is strictly a legal objection, to be supported by strict legal proof. (38) Incompetency.

(36) Phillips Law of Ev., vol. 1, p. 165.

(37) " The reason given is, that every man may be supposed capable of supporting his *general* character,' but it is not likely he should be prepared to answer to *particular* facts, without notice; and unless his general character and behaviour are in issue, he has no notice. If a witness on being questioned, whether he has not been guilty of a felony or of some infamous crime, deny the charge, the party, against whom the Witness has been called, will not be allowed to prove the truth of the charge : such evidence is not admissible, either for the purpose of contradicting, or of discrediting him. This principle has been established by many Cases of great authority. You are to ask, what is his *character* and *reputation*. *Phillips*, vol. 1, 277. No notice. Character and Reputation.

(38) By the production of the Record " not only of his *Conviction*, but of the *Judgment* thereon; for the conviction may possibly have been quashed on a motion in arrest of judgment. An admission by the Witness himself, that he had been convicted was held insufficient. And an admission by a Witness, that he has been guilty of *Perjury*, on another occasion, is no objection to his *Competency*, whatever effect it may have on his *Credit*." Russell, vol. 2, 594. " Records are proved either by producing the Record itself, or by Copy."—Russell, vol. 2, 720. No admission by Witness.

In Mily. Cases, if the Record were required from the J. Adv. Genl.'s Office—a Certified Copy of the Charges, Finding, Sentence, and Confirmation (including the date of order and authority to hold the Court and date of confirmation) signed by the J. A. G., &c. would be sufficient—and should be so declared legislatively. The meaning of the term " Record" is this—The Indictment is on Parchment—when the Foreman of the Jury returns a verdict of " Guilty"—the Clerk of the Arraigns, records—Verdict " *Guilty*," and when the Judge has passed Sentence, he then records sentence " *Death*," or Proposed.

QUESTIONS TO BE DECIDED BY THE COURT.

By a Majority.

Captain Simmons states that ([1]) "The Majority of Votes decides all questions as to the admission or rejection of Evidence, and on other points involving Law or Custom; and in such Cases, where the Votes are equally divided, the custom of the Service, and the necessity of the Case, justifies the decision of the question on the side on which the President may vote" —though he admits that as to the Finding or Sentence, "should the Court be reduced to an even number, and be equally divided in opinion, the *prevailing custom* of the Army is, that the Prisoner should have the benefit of an Acquittal." ([2]) I cannot see why there should be a distinction between the two Cases. 1st, As to the mode of proceeding—The proposition is either made by the J. A. or Prosecutor, and may be objected to by the Court or Prisoner. If the Prisoner deem it unjust to his cause he may, no doubt, state it—but, as the Atty. Genl. or Counsel for the Crown, usually takes his own course, unless deemed by the Court to be illegal, when the Judge or Judges interfere—so in *Mily.* Courts, it ought to be determined by the J. A. and Court, what the mode of proceeding shall be, ([3]) but, in either Case, the mode of proceeding, whether a question shall be put—or be rejected—or "on points involving *law* or *custom*;"([4]) 2nd, As to the admission

"*Transportation*," &c. There is no *Evidence* on the "Record;" I, therefore propose a legal mode of acting for Mily. Courts. It would be useless to send to a distance of 1000 miles, perhaps, the whole proceedings extending, may be, to 5 or 600 pages, besides the waste of expense and delay; the former would be sent by the Letter Dawk, the latter by "Dawk Bangy," and the Court, besides, have nothing to do with the Evidence, or justness of the Verdict, &c. so recorded.

([1]) p. 134 (1835.)

([2]) p. 214, *Do.*

([3]) It would not be legal on the part of the Prisoner to object to evidence being taken Charge by Charge, the usual practice—or on one Charge before another—or to Examining Witnesses out of their turn—Medical men—or those who may be about leaving a Station on duty, or leave—their Evidence not being required on the Defence—or, (where, the Prisoner consents) to cross-examine them, instead of examining them on his defence.

([4]) These are, surely, in the province of the J. A. who, if he can, produces authorities; or states the Law or Custom—the Court *may* overrule his opinion—and if they erred, the Prisoner would benefit by it.

or rejection of Evidence or Questions—we will suppose the Prisoner to object; surely the Evidence, or Question if admitted by the *Casting*, or *double Vote* of the President is as much wrong in principle, as to admit of his Casting Vote as to the Finding or Sentence, which *Capt. S.* disallows—since the admission or rejection may *bear upon* the Finding. (5) But, as *Capt. S.* does not quote a single Case in *support* of the "Custom of the Service" (6) I must reject the Custom as it is not proved. (7) And as to the "*Necessity*" of the Case, I see no necessity to deviate from the rules

(5) If the admission or rejection be illegal, it is true that the Comr. in Chief will disapprove of the Case to such extent, or wholly of the proceedings; but why adopt an illegal course, or make a President equal to 2 Members!

(6) The Annl. Art. 79 declares as to Regtl. Cts.-Ml. the Award to be by a "Majority of *Votes*," and Sect. XIV. Art. X. shall give judgment by a "*Majority* of *Voices*." As to the *ancient Custom* it is stated by *Bruce* (Institns. of Mily. Law, p. 208) that—"notwithstanding it may be doubted whether, whatever punishment is decreed, should not be consented to by a *Majority of the Members*; that the President is to have a *Casting Vote*, was *formerly* expressed in the Articles of War; and though it is now discontinued, yet it is not to be considered as a Statute repealed; but is still in force by the *Custom of the Army*," p. 269 M. S. J. A. G. O.

Sir C. Morgan (formerly J. A. G.) declared that "It is *now* held at the Horse Guards, that a President has *no Casting Voice*"—note pubd. by "*James*" in his Edition 1814 of "*Tytler*," at p. 135. So that, I take it to be proved, that the President has *no* "Casting Voice" in the Finding on Sentence.

The same rule which governs one question should be the guide in all Cases—the opinion given in the year 1746 by Dr. Paul to the Lords Commssrs. of the Admiralty, as to the decision upon a certain Debate which was put to the Vote of a *Naval* Court-Martial—is decisive—"I therefore conceive that a Ct.-Ml. should observe the same *reasonable* rules that other Courts of Justice comply with; the point at issue may be reconsidered by the same Judges, and if they should alter their opinions, that may produce a final determination of the point in question; but if the several Members of the Ct.-Ml. adhere to their first opinion, *upon which there is an equality, I think the question must remain undecided.*" McArthur, vol. 1, p. 434—Edn. 1813.

I must presume that the Legislature meant one mode of taking opinions in *all* Cases—the Company's first Articles of War (1754) Section XII. Art. XI. uses the term by "a Majority of Voices," in which the Casting Vote is not mentioned, so I presume that the omission above alluded to must have taken place before 1746 if not 100 years ago; and such omission must legally, be held to be decisive.

(7) Sir C. Morgan's opinion must be 30 years old, as the note was on the 2nd Edn. of Tytler, pubd. in 1806—and *his dictum* must be received as the Custom—since no subsequent J. A. G. has altered it.

of *other* Courts in so grave and important a point. ([8]) *See Votes.* ([9])

Reply.

Of Right to Atty. Genl. or J. A.

1.—The Reply is of *Right* allowed to the Attorney General. The former Advocate Genl. of Bengal ([10]) has declared, that the J. A. G. on public Prosecutions has the *Right* ; but that other Prosecutors are allowed only at the discretion of the Court. ([10]) Tytler at p. 253 declares—" to this Statement, (Defence) on the part of the Prisoner, the Prosecutor has a *right* to make a reply"—the late Sir C. Morgan, J. A. G., in his note stated that the Prosecutor is allowed by argument to reply; but not to bring Evidence unless new matter has been brought forward in the Defence. ([11]) It may be said in Mily. Courts that the private Prosecutor, being a *Mily.* person, or Officer, even if he prosecutes another Officer for Misconduct towards himself is not like a private Prosecutor in a Court of Law ; but prosecutes on public grounds ; at least that the trial is ordered on

([8]) If a question or point be so doubtful as to have an equality of Votes *pro* and *con*—it would surely be the more just course to give it in favor of the Prisoner—and for this purpose, I should hope some Member would always change his opinion.

([9]) Where the question will be more fully entered into—and a *Proposal* will be found—to have it, *legislatively*, decided—The " *Casting Vote*" is given to the Chief Justice by the Charter of Justice. (1774) Sect. IV. Rules and Orders of Supreme Court, p. 138. By the New Charter (3 & 4 Wm. 4. c. 85. S. XXII.) the President of the Board of Control has, where the Commissioners are equally divided, " two voices or the Casting Vote" and so has the Gov. Genl. of India in Council by Sect. XLVIII. The Chief Commissioner of the Ct. of Requests (Calcutta) has by Proclamation. G. G. in C. 24th Oct. 1819. But in the Court of Directors or Court of Proprietors E. I. Company, there is *no* Casting Vote.

([10]) Mr. (now Serjt.) Spankie, Lr. to Lord Hastings, Comr. in Chief in India, 3d Nov. 1822—stated that " where there is no other Officer to represent the Crown, like the Atty. Genl., the J. A. G. in public prosecutions is entitled to the privileges of the Atty. Genl. in reply—In the Courts of Law, as to prosecutors, it is in the discretion of the Court to allow it or not—I cannot conceive, however, that the Court was justified in refusing to allow the J. A. to reply—Trial of Lt.-Col. Robinson, H. M.'s 24th Foot, at Bombay—G. O. C. C. 9th Nov. 1822 —and G. O. H. G. 26th. July, 1833. The J. A. was Col. Kennedy, late J. A. G. Bombay Army.

And so must the D. J. A. G. have, upon the same principle.

([11]) This opinion was given 30 years ago. See Note 7.

public grounds; the Conduct imputed, though *ungentlemanly*, being still unbecoming his *public* Character as an Officer, still the *right* is not admitted—and in the *Navy* never. ([12]) Not in the Navy.

2.—It was stated by a J. A. G. of the Bengal Army ([13]) that "it is as much a matter of course, that the *Prosecutor* should *reply*, as that the *Prisoner* should answer the Charge." ([14]) This was the doctrine more than 50 years ago. In later times when the J. A. made a reply, there being no Evidence for the Defence, or new matter, it was disapproved of. ([15]) In the *Civil* Courts, the right of the *Atty. Genl.* to reply, in *State Trials*, is laid down: but in *Civil* Causes, or in Prosecutions in the name of the King, if the Deft. only observes upon the Evidence, it is not allowed to Pltff. Old doctrine.

([12]) on the trial of Adml. Keppel, 1779, the Prosecutor, Sir H. Palliser, wished to reply, "as the Adml. (Keppel) has thought fit, in some measure, to defend himself by criminating me"—the Prisoner objected to this, on the grounds of its being unprecedented. The Court retired, and after staying an hour returned, when the following resolution was read:

"The Court, &c. that now it is declared the whole evidence, not only on the part of the *Charge*, but of the *Defence*, has been closed, *nothing further by way of address from either party can be received.*" McArthur, vol. 2, p. 185. Sir H. P. in a Speech in the House of Commons, 4th Dec. 1780, asserted that he *had* a right to a Reply—See "*Delafons*" on Naval Ct-Ml. 1805, p. 230—where Mr. D. states that, "the Prisoner having made his Defence, the Prosecutor has a *Claim*, in case he finds it necessary, to make a reply"—*McArthur*, is the latest Naval-Law Authority: while *Mr. D.* only quotes the Case especially decisive of there being no such Custom in the Navy!

([13]) *Ste. Sullivan, Esq.*, 30th Jany. 1781, which was published in M. C. 8th Feb. 1781. See p. 149 to 154, M. S. J. A. G. O.

([14]) Subsequent to this opinion and in the time of the Marq. Cornwallis it was stated that "If the Prisoner confines his Defence to the simple contradiction of the Evidence brought by the Prosecutor, here all the Evidence is finally closed; unless the Prosecutor calls Witnesses to impeach the character or testimony of those of the Prisoner, the Prosecutor can *then* observe upon the *whole Evidence* but can produce *none*. The Court are then to consider of their judgment; but, if the Prisoner in his Defence introduces any *new matter*; or any Evidence not examined by the Prosecutor; and has other *collateral matter* to give in evidence from which his innocence is to be presumed as where the attempt to prove an *Alibi*; or *good character*; or to discredit the Witnesses for the Prosecutor; and the Prosecutor has a right to examine Witnesses on this *new matter*." Adjt. Genl.'s Office, 20th May 1788, p. 168, M. S. J. A. G. O.

([15]) G. O. C. C. 16th Dec. 1829.

(Prosecutor.) (16) But there is an instance of the refusal of the Court to permit Counsel for the Prosecution in a case of *Murder* to reply when the Prisoner *had* called *Evidence* in his Defence on the merits of the Case (17)—so that we see that, strictly, unless there be *new Evidence*, or some points of law, stated in the Defence, it is not usual to reply. The Case of Trials for High Treason, or State Trials, stand on different grounds—and the Case is different between the J. A. G. or D. J. A. G. and another Prosecutor.

Not always in Criminal Cases.

3.—It is clear that in the Case of the Atty. Genl. there are besides, the Judges or Judge to inform the Jury. In *Mily.* Courts as there is no other person to

(16) On the trial of *John Horne, Clerk*, on an information in the K. B. by the Atty. Genl. (*Thurlow*) for a libel 1777. The C. J. (L. S. *Mansfield*) said—" now I will tell you what I take to be the practice. The nature of a reply is the Pltff's. answer to new matter advanced by the Deft. The Pltff. knows his own Case; he knows his Witnesses; he opens it; he observes upon his Witnesses; and he draws such conclusion from them as he thinks proper, to persuade a Jury to *increase* the damages. The Deft. if he only makes observations upon the *same* Evidence, and only draws conclusions from the same Evidence to the Jury, to *lessen* the damages; *why then, there is nothing new, there is no new matter at all: and by the practice*, for expedition in *Civil* Causes, and in *prosecutions* in the name of the *King* with common informers, the practice is, that they *don't reply* where that is the case. But, notwithstanding that, if the Deft. was to start a *point of law*, the other *must* be heard. If he was to throw out to the Jury, to catch and to surprise them, allegations of facts to which he called no witnesses to prove—you recollect how many millions of facts you have heard urged to-day, for which no Witnesses were called —(how many *extrinsic* to the cause)—there the Counsel for the Pltff. may set the Jury right, and lay them out of the cause, and show that they are absolutely irrelevant and immaterial. But, in *solemn Trials, in State Prosecutions*, where the Atty. Genl. attends, I never knew it denied, but that he had a right to reply, (so in Dr. Hensey's Case, High Treason,) (1758) though no Evidence by Deft.—the Solr. Genl. (*Yorke*) for the Crown, was heard in reply to matters alleged in the Defence, Ste. Tr. vol. 19, p. 13, 42 Ste. Trial—vol. 20, p 762.

(17) Jno. Huggins, Esq., Warden of the Fleet O. B., 20th May, 1729 the Counsel for the Prisoner objected to Serjt. Cheshire (the Atty. and Solr. Genl. were present) replying—*Mr. Jas. Page.*—" I am of opinion you can't reply"—*Atty. Genl.*—Mr. Higgins endeavours to show that Gybbon was the Acting Warden—*Mr. Jas. P.*—Mr. Atty. I cannot admit you to enter into any *reply*, but if you have any Evidence you may call them (examined to the above fact) but no reply—*Ste. Tr.* vol. 17, p. 353.

When promissory notes were put in by the Judge (Sir E. Ryan) he said to the Adv. Genl. " I put them in, so they will entitle you to a *reply*"—the Advt. Genl. said he considered they would—Trial of Rajah Buddenauth Roy for Forgery—Calcutta, 20th Jany. 1830.

inform the Court, but the J. A. as to a point of *Law*—a reply from the private Prosecutor in such a Case is of no use. A summing up by the J. A. may be, in some Cases, necessary—though there be no new matter, or point of Law raised—but a summing up and a reply are very different things—the former is merely an exposition, in a fair and impartial manner of the Evidence *pro* and *con* divested of all personal allusions—the latter, if made as to *new Evidence*, or to reply to a legal objection, is properly the province of the J. A.—but though there be no reply, there is often a *Summary* of the Evidence by the J. A., ([18]) which contrasts the Evidence for the Prosecution and Defence; leaving the Court to draw the inference from any discrepancy. **Summing up and Reply different.**

4.—It is obvious that cases of reply have arisen chiefly from the admission of new Evidence, or irrelevant matter in the Defence which should not be admitted, and the same Rule should be strictly applied to the Prosecution. *Capt. Simmons* states ([19]) that "the Prisoner having closed his Defence, the Prosecutor is entitled to his reply, when *Witnesses* have been examined on the *Defence*, ([20]) or when *new facts* have been opened in the Address, or *new observations* or *inference* made. Thus, though no Evidence may be brought forward by the Prisoner, yet should he advert to any Case, and, by drawing a parallel, attempt his justification, the Prosecutor will be permitted to observe on the case so cited." There should be a Rule laid down —I, therefore, propose— **Irrelevant or new Matter excluded.**

5.—That no Prosecutor, not being the J. A. G. or D. J. A. G. shall make a Reply to any Defence, unless new Evidence or new matter shall have been introduced on the Defence. That where any point of law **Proposed**

([18]) "The Prosecution and Defence being closed, it has been usual, in India, for the J. A. to form a *Summary* of the Evidence; but this cannot well be necessary, unless the Proceedings are very voluminous and complicated," p. 256, M. S. J. A. G. O.

([19]) p. 197, (1835.)

([20]) This could not be necessary in all Cases because Witnesses *have* been examined—they may but so slightly contradict those for the Prosecution as to render a reply useless—*Colonel Kennedy* states the same—"In *all* cases where a Prisoner calls Witnesses in support of his Defence the Prosecutor has a *right* to make a reply" p. 81, (1832).

or other legal objection shall be raised by the Prisoner on his Defence, or in any other way, it shall be answered by the J. A. or Officer officiating as such. That observations made in a Defence relating to the Prosecution or the Evidence, unsupported by proof not being Evidence, and all Courts-Martial being sworn to "*determine according to the Evidence.*" ([21]) No Reply to such observations can be necessary—Provided, that if the Prisoner has any matter to bring forward distinct from, and not appertaining to the Charge or Charges under trial, having Evidence to prove the same, the person so under trial shall be at liberty to submit such matter to the consideration of the Comr. in Chief, in the usual manner—Provided, also, that the Prisoner under trial may urge, concisely, in his Defence, any mitigating circumstances for the consideration of the Comr. in Chief; ([22]) or examine Witnesses as to Character, or as to Services; and produce Testimonials relating to such facts—Provided always, that it shall not be competent to any Mily. Court to receive Evidence as to any extraneous Matter, or any which is irrelevant to the Charge or Charges submitted to the Court by competent Authority.

See para. 11.

No Reply in the Navy.

6.—As a Reply is not allowed in the *Navy*, I do not see why it should be in the *Army*. It must be clear to any one that the Prisoner being charged with the commission of a certain Offence or Crime, the natural course is to adduce Evidence strictly bearing on such Offence or Crime, and to confine the proofs to the points contained in the Accusation. We are not to consider the case on the principle of a bare legal question. The object is not to debar any *Military* Officer, &c. from the privilege of that justice which is the *Civil Right* of all British Subjects—but, as Mily. Courts should be conducted more concisely, and be divested of those minute technical rules which belong to the Civil Courts—the object is to render Mily. legal Proceedings more simple than prevails at the present day. It may happen, as has often been the case, that ulterior

([21]) Oath of Members p. 96. Appendix Annl. Art of War.

([22]) Upon which, if the Officer, &c. submitted that he had Evidence to support such allegations, a trial would most probably be ordered.

proceedings may arise out of those under investigation —but, why hamper the present Case with an inquiry into foreign, or extraneous matter!

7.—*Capt. Simmons* says ([23]) Where Witnesses are introduced in the Reply, a Rejoinder is permitted; wherein by argument and deduction, he may endeavour to invalidate their effect; to which object he is strictly confined; but the Prisoner is not permitted to call further Evidence. ([24]) *Colonel Kennedy* states ([25]) "But if no Evidence has been adduced on the reply it seems clear that the Court ought not to permit the Prisoner to rejoin; though perhaps, in Cases where a Rejoinder is admitted, it might, without deviating too far from the regular course of proceeding, allow the Prisoner to make the Rejoinder after the Reply." *Capt. Simmons* ([26]) states, "to an extent limited by the Arguments of the Prisoner, the Prosecutor is allowed a *second reply*, or *Sur-rejoinder*, ([27]) as it is sometimes called. It is a rule in Civil Courts, equally observable in Mily., that the party which doth begin to maintain the issue ought to conclude." I certainly never heard of a *Sur-rejoinder* in any Mily. Court—and no work on Mily. Law, I believe, has used the term.

No Rejoinder.

Or Sur-Rejoinder.

([23]) p. 200, (1835.)

([24]) The re-establishment of the Credit of Witnesses impugned I here omit, as it is universally allowed.

([25]) p. 87, (1832.)

([26]) p. 200, (1835.)

([27]) Col. Kennedy, p. 87 (1832) remarks—"on what authority Capt. Simmons has stated in his Work, p. 196, (but p. 200 of his last work) that the Prosecutor is allowed to make a reply to the Rejoinder, and the Prisoner to Sur-rejoin, I am at a loss to understand, for I never heard or knew of such a circumstance occurring at any Court-Martial. On the contrary Cts.-Martial have been in the habit of allowing Rejoinders under the impression that the Prisoner's addressing the Court last was favorable to him"—*Col. Kennedy* adds—"As however, the prisoner cannot at this stage of the trial adduce any further evidence, except for the purpose of re-establishing the Character of his Witnesses if their credit has been impeached by the Prosecutor, it seems obvious that the Prisoner is not deprived of any advantage in not being allowed to make a Rejoinder, for an address that could be nothing more than a *recapitulation* of what has been stated in the *Defence*, is not likely to make any impression at a Gl. Ct.-Ml."

I certainly never heard of a "*Sur-rejoinder*" till used by Captain S——, and I hope it will be confined to the litigation of the *Civil* Courts.

8.—*Sir C. Morgan* ([28]) states that "if the Prosecutor in his reply introduces perfectly new matter (which in strictness is irregular,) without calling Evidence, it is but fair either that the Court should stop the Prosecutor from going into such new matter, or if he is permitted to go on, to hear the Prisoner afterwards in reply to such new matter."

Mily. Writers disagree.

9.—The Writers on Mily. Law allow of a reply upon different principles — *Sir C. Morgan* ([29]) gives the right; I quote him first as having been the J. A. G. at the Horse Guards—*Tytler* ([30]) states that "To this statement, ([31]) on the part of the Prisoner, the Prosecutor has a right to make a reply; and under this privilege he may either recapitulate, methodise the import of his Evidence, and *strengthen* it by pertinent *argument*, or show the weakness and insufficiency of the proof in exculpation: and here, in strict regularity, the trial ends." *Sullivan* ([32]) states "the examination of the Witnesses being at an end, the *Judge Advte.* is allowed to reply ([33]) to his Defence; not, however, upon any *new* subject matter that shall appear, but strictly to that which shall relate to the original Charge." ([34]) The author of the Mily. *Law of England* ([35]) quotes *Sullivan*. *Adye* ([36]) states that "the

([28]) Formerly J. A. G. (note on Tytler, p. 257,) who first states that "some doubts have arisen as to a *Prisoner's* having a right to *rejoin* to the *Reply* of the Prosecutor, this mistake, however, is probably grounded on the supposition of a Case which rarely happens, of a Prosecutor being permitted to introduce *new Evidence* in his *Reply*; in which Case the Prisoner is entitled to be heard upon *such new Evidence*; and the Prosecutor will be, in return, to a Reply to the same extent."

([29]) Note to Tytler, p. 253—"The Prosecutor is allowed by *argument* to reply; but not to bring Evidence, unless, *new matter* has been brought forward in the Defence."

([30]) p. 253.

([31]) "Summing up verbally, or in a *written statement*, the general matter of his defence, and to bring into one view the import of the proof of the charges; and the result of the evidence in Defence."

([32]) p. 41.

([33]) Lord Geo. Sackville's Trial H. G. 7th to 24th March and afterward 25th March to 5th April, 1760 D. J. A. G. Chas. Gould, Esq.

([34]) "And in like manner as the J. A., the prisoner *may* be indulged in answering him in *rejoinder*!"

([35]) Mr. Scott,

([36]) p. 180.

Evidence on both sides being heard, and the Prisoner having made his *Defence*, the Prosecutor has a *right*, in case he finds it *necessary*, to make a reply. By a reply is to be understood, a right of *observing* upon the Evidence in general, which cannot be done until it has been heard on both sides, and also a *right* of controverting by Evidence any *new matter* introduced by the Prisoner in his Defence." *Col. Kennedy* (37) states that "in *all* cases where the Prisoner calls *Witnesses* in support of his *Defence*, the Prosecutor has a *right* to make a reply." (38) *Capt. Simmons* (39) gives the same opinion, and adds, "or when new facts have been opened in the Address, or new observations or inferences made. *Thus, though no Evidence may be brought forward by the Prisoner; yet should he advert to any case, and, by drawing a parallel, attempt his justification, the Prosecutor will be permitted to observe on the case so cited.*" (40)

10.—We, thus, see the opinions of the above seven Writers on Mily. Law (41) are at variance, and that, consequently, Genl. Cts.-Martial are liable to act on different principles. The object stated by *Tytler* is to "recapitulate, methodise the import of his (Prosecutor's) Evidence," if required by the Court; (42) if not, the Case should close with the Defence. It is clear if extraneous or new matter be *not* allowed to be introduced into the Prosecution, that the Prisoner has *no* right to introduce any, and if he does *not* introduce any, there can be *no* ground for a reply!—hence I propose this Rule: Various modes of. Procedure.

11.—That no extraneous matter or new Evidence shall be given in Evidence on any trial, either on the Proposed.

(37) Late J. A. G. Bombay Army, p. 81, 1832.

(38) The rest as "Tytler."

(39) p. 197, (1835.)

(40) The J. A. should, if necessary, do this. I cannot find out in *Capt. McNaghten's* last Annotns. (1828,) on the M. A. 4 Geo. 4, c. 81—any thing regarding a Reply—but I incline to the belief that he is in favor of the *Right* of a Reply.

(41) I have quoted *all*—and all Civilians, except Major Adye—Colonel Kennedy and Capt. Simmons—and all had been J. A. except, I believe, Mr. Scott.

(42) For *Mily.* Courts, as well as Juries often declare they wish no "Summing up" by the Judge Advt. or Judge—If a "Summing up" be required; let the J. A. make it.

Prosecution or Defence. That, if necessary or required by the Court, the J. A. shall "*sum up*" the Evidence, ([43]) in a concise and impartial manner—whether the J. A. be the Prosecutor, or not—Provided, that it is competent to either party to examine Witnesses, on Oath, to re-establish the Credit of any Witnesses which may have been impeached. The *Court*, being at liberty at all times, to examine Evidence, before the Verdict or opinion has been given.

See para. 5.

12. There have been Cases of a reply being made by the *Joint*-Prosecutor as well as by the J. A. ([44]) The inconvenience to the Service of allowing a reply is obvious—and, assuredly, if a Prosecutor knew he would have *no* reply he would adopt a course to prevent any defect in his Prosecution. He may first, *very shortly*, open his Case by an Address—and close his Evidence by Remarks on particular points. The Prisoner, can do the same. It is the Court who are to contrast the Evidence on *both* sides—impartial Judges can, aided by the J. A., better do so than persons who advocate a Cause in which they take *one* view only, and that of their own Case.

Two Replies have been made!

13.—There are other points of objection, I think, mentioned by *Capt. McNaghten* ([45])—that "the situation of Prosecutor is never a popular one, and for the ends of Justice it is necessary to prevent whoever is in it from being wantonly calumniated." And that "nothing can be more true than that, in the majority of instances before a Mily. Court, a *private* Prosecutor is as much on *his* trial as a *Prisoner*, ([46]) why place any Officer in such a situation? If he be talented and can be useful to his own Cause, let him be made *Joint*-Prosecutor — but, Prosecutor, never! Courts have often made remarks on the intemperate style of a reply ([47])—the J. A. is not liable to the same objection: and if he be intemperate in his Conduct, he

Prosecutor should be no party.

([43]) The J. A. should always have, in intricate or complicated Cases, a Paper of *References* to the Evidence on the different points, on the Prosecution and Defence, to assist the Court.

([44]) Which is *doubly* wrong.

([45]) Annotns. (1828) p. 210.

([46]) *Do.* p. 219.

([47]) G. O. C. C. 11th April, 1827, and p. 105—1830, &c. &c.

should be removed from his Office—he should bring with him into Office, at least, Industry, and good Temper.

14.—If there should be any Evidence omitted by the Prosecutor, but still bearing on the Case—which the Court or either party deem necessary, it is open to the Court before the Verdict is given to inquire into the same, even after the Defence; and the Prisoner will be entitled to cross-examine on such Evidence. The great addition made to any Proceedings by a reply is obvious. What can better guide a Court than reading the Evidence themselves! So much additional matter is to be sent to the Comr. in Chief—for what purpose? It is as likely to perplex him, as well as the Court. I was told by a J. A. of a Case which occupied, including documents, from 1,500 to 1,600 pages folio, (48) which contained 23 *Charges and* 50 *Counts*, and occupied nearly *three* months!!! and what was the Sentence—why a Reprimand! (49) It must have cost Govt. at least 1,000£! and took away 15 Officers from different Stations—and from their duty, for more than 3 months! (50)

Court to decide on new Matter.

(48) Late Lt.-Col. Hunter's trial held at Meerut—G. O. C. C. 25th Oct. 1834.

(49) G. O. C. C. 25th Oct. 1834, and the publication occupied 11 pages folio print of G. O.!

(50) Col. Kennedy states p. 84—"If however, the Defence is merely of an *extenuatory* nature, it will be evident that all the circumstances which the Prisoner may adduce in Evidence for the purpose of palliating the misconduct imported to him, must constitute *new matter* as such circumstances could not have been anticipated by the Prosecutor—Yet Courts-Martial are frequently unwilling to consider it as such, because it was not intended to *refute* the charge, but merely to extenuate the Prisoner's culpability" and alludes to the Case of an Apology *p.* 85 *note*—he says "Suppose therefore, a Prisoner calls Witnesses who depose that he had offered an apology, that it was in their opinion a perfectly sufficient one; but these Witnesses cannot recollect the precise words, &c.—surely, &c. the Prosecutor ought to be allowed to show of what improper a nature the apology was, and to prove that the offer of it was an aggravation and not an extenuation of the Prisoner's misconduct?"

It is clear that the bare offer will not do—the Prisoner, to benefit by it, should show whether it was accepted, or if not why refused—See G. O. C. C. 8th May 1829, and 16th April 1830—as to apologies.

It would be better, the Defence being closed—and only Evidence on such extenuatory matter left—for the Court to suffer if necessary, any Evidence to rebut such matter—but the Prosecutor should confine himself to the charges—Assertions without evidence, will not avail—Such extenuatory matter should be short—for it is obvious that the prisoner should not be allowed to do more than that, as in the *Civil* Courts—in which affidavits are given in to lessen damages.

Rejoinder.

For the reasons given under the head of "Reply," there should be no "Rejoinder." In the Case of Col. Quentin, the J. A. G. (51) said, "the Prisoner has been permitted sometimes to address the Court afterwards, (on the reply) but that is not the regular course, nor consistent with the ordinary Rules of the Court."

Irregular!

Close of Proceedings.

Proceedings read over, or not.

The Proceedings being closed the Court is cleared, and the Evidence is read over, or not, as the Court may desire. It would, in many Cases, be a waste of time to do so. After a Judge has "summed up" the Evidence—the Jury, if necessary, ask to have certain parts read. So in Mily. Courts if there be a summing up or not in open Court—any Member can desire to have any part of the Evidence read (1) at any time.

Votes how taken as to Guilt, or Innocence.

It is usual, where there are several Charges or Counts, to take the Votes on each, (2) separately. And I think the *J. A.*, and not the *President*, as laid down in the 94th Article of War (Annl.) should be the person to do so. Let it be so enacted—Thus, "and in taking

Proposed.

(51) "*Sutton*," printed trial, p. 34, held from 17th to 31st Oct. 1814.

(1) The J. A. should arrange the different points of Evidence in this manner on a Sheet or Sheets of paper—say there are 3 points—*Disobedience* A—*Disrespect* B—*Insult* C—These letters A, B, C, being marked over the above words—then :

A	*Prostr.'s Evidence.*	*Defence.*	*Prostr.'s Address.*	*Prisr.'s Written Defence.*
Disobedience. p. 5,	15 30	35 40	5 25	38

(2) In the Case of a *King's* Officer or Soldier, the Annl. Art. of War 94 directs the *President* to take the Votes—In the Case of a *Company's* Officer, &c.—Sect. XIV. Art. V. is silent—I have recommended that the *J. A.* should take the Votes in all Cases.

the Votes of the Court, the *J. A.* ([3]) shall begin by that of the youngest Member. *It will be the duty of the Court to ascertain that the Votes are correctly taken,* ([4]) *that a Majority of Votes is required in all Cases, as to the Finding or Sentence, or as to any other question: Provided that where the Sentence is or may* ([5]) *be Death, two-thirds* (2-3ds.) *of the Officers composing the Court-Martial shall concur in the Finding and Sentence. And if there shall be an equality of Votes as to the Prisoner's "Guilt" or "Innocence," the Prisoner shall be acquitted of the Crime to the extent charged, and not have a Sentence of Death passed against him—but it shall be competent to the Court to*

([3]) The J. A. does so in the case of the trial of Company's Officers and Soldiers, and is more accustomed to the duty—and is the recording Officer.

([4]) To prevent the possibility of any mistake—On the trial of Lt. T. (*See G. O. C. C. 25th March* 1830) the J. A. declared it is said, that the Verdict against Lt. T. was "*Guilty.*" It was afterwards stated by some Member that the votes of the Court were silently taken (there were 17 Officers)—the Sentence was "*Death,*" *approved* by the Comr. in Chief, but *remitted*; Lt. T. made an Affidavit to the following effect (as told him by a Member on the Gl. Ct.-Ml. which tried him)—"That each Member wrote his individual Vote and Opinion (in regard to the *Verdict*) on separate slips of paper, and that no Vote was given *vivâ voce*, but that all was done in silence, so that no one Member knew the Vote of another—that the said slips of paper were handed to the D. J. A. G. who, on collecting the whole, examined them in silence, and then declared it had been given against the Prisoner"—after which "that a paper with the Sentence written on it, was silently passed round the table and that the several Members read it and each passed it on to his neighbour; that no Member assented or dissented to the Sentence, and that no Member *Voted* for Sentence of Death—and that Deponent is informed such mode of taking the Votes and Opinions is illegal."

This affidavit was sent to the Comr. in Chief's Mily. Secy., and the Comr. in Chief ordered an inquiry into the fact.

The Opinions of 3 Counsels in Calcutta were taken who declared that "the Votes not being delivered *aloud*—the Court not only deviate from all Mily. precedent and practice, but violated the most ordinary maxim of prudence and justice—if each Member silently wrote his opinion and the J. A. silently perused it, &c. the *Counsel* were—Messrs. L. Clarke—Cleland (late) and Dickens. Lt. T—— threatened to prosecute the President—and might have prosecuted all the Members—but why did *not* the *Member* who gave the above information declare in closed Court the fact which came to his knowledge, and *demand* to have the Votes read to *each* Member *for* their approval—had he done so, there could have been no *after* dispute!

([5]) If the Sentence, on conviction, is by Law Death (*Murder*) the Court can award no other Sentence—If the Case be *Mutiny* or *Desertion*—2-3rds must concur in the *Finding*, as well as *Sentence*, or else you use two principles of action.

acquit the Prisoner of a Crime of Murder, Desertion, &c., and find him guilty in a less degree, in all Cases where they can legally do so. And if, in the decision of any other question, the Court shall be equally divided in Opinion, the question must be undecided, unless the Court shall, on reconsideration, change their Opinion: the Prisoner being entitled to the benefit of any Doubt. The President not to have any double or Casting Vote (6)—Provided that all Votes or Opinions shall be taken vivâ você; or if in writing, to be read out to the Court by the President or some other Member of the Court. (7)

(6) See, Casting Votes under "*Votes*," "Miscel. Matter" and "Index."

Written Votes. (7) When out of 15 Votes 7 *pro* and 7 *con*, he Votes *last*, and it casts, or *Weighs* down one side; the objection is to having 2 Votes. With the same President, at the request of the Court, I adopted the plan of taking the Votes on slips of paper—but as in Note 4 not sub silentio. The Court thought that the Case being complicated, Members would give a more unbiassed opinion if they did not hear the Votes of the other Members preceding them—this is more strongly the Case with those who Vote last—as some count the *pros* and *cons*, and the President has, though not a *double*, in point of fact the Casting Votes. I made slips of paper for each count—and I gave one to each Member who, having written his opinion, handed the slip doubled up, to the President—the whole being thus finished, I asked the President to read the papers aloud—and requested each Member to acknowledge his Vote or Opinion, or object, which was done. As the slips were handed up by the Member who first wrote his Vote—they were handed up not in regular order, and that of the youngest Member not read *first*, it was by chance—the order for beginning with the *youngest* Member, is to prevent the Vote of the *youngest* being biased by that of the *oldest* Member—and is supposed to be, therefore, in favor of the Prisoner—*If* the Votes and Opinions are read out to each Officer who has written his Vote or Opinion—there can be no *legal* objection.—The term "*Votes*" is used in Art. 94 and Sect. XIV. Art. V. the term by a "*Majority* of *Voices*" is used in Sect. XIV. Art. X.—Art. 79 (Anl.) states by "a *Majority of Votes*"—the latter would include Votes not *vivâ voce*—A Jury Vote among themselves—in the Case of "*Woodfall*" for a libel 1770 *Ld. Mansfield* said—(opinion of the Court) "where there is a *doubt* upon the Judge's Report, as to what passed at the time of *bringing* in the Verdict, *there* the affidavits of *Jurors*, or by-standers, may be received upon a motion for a new trial, or to rectify a mistake in the Minutes." *State. Tr.* vol. 20, p. 919.

"The Court of C. P. refused to set aside a *Verdict* upon the Affidavit of a Juryman that it was decided by *lot*." 1 New Rep. 326—Tomline's Law Dicty. title—Verdict.

A Juror has said "I do believe it (the Evidence), but my brother Jurors do not believe it." *Samuel Scott* and others before *B. Ratch*, Esq. M. P. and other Magts. Middlesex Sessions, 16th March, 1833.

French mode. It was the practice in the *French Army* before the Revolution to collect the Votes thus—"A sheet of paper is then given to the

FINDING.

The Court may either find the Prisoner guilty generally, or guilty as to parts, and acquit of the rest—or "not guilty" and acquit altogether—in which Case "not guilty and do acquit thereof"—is usually recorded—but if the Court recorded "not guilty" simply—it would be legal, (8) and I think should be sufficient. In the Case of "Murder" they may acquit of "Murder" and find guilty of "Manslaughter"—or "if indicted for cutting and wounding, with intent to *Murder or* do some grievous bodily harm," the Jury may find "with intent to do grievous bodily harm" (9)—or, the Court may acquit of "*Mutiny*" or "*Desertion*," and find guilty in a *less* degree—as of "Insubordinate Conduct," or "of Absence without Leave," and the like. Guilty or Innocent generally or partially.

youngest Member of the Court, who writes at the top of it his Opinion and Vote; folding down the paper upon the writing, and presenting it to the next in order of Seniority, till all have written down their Opinions; that of the President being counted as *two, when on the side of Mercy, and as one, when for Punishment.* The President then opens the paper, and after arranging the Votes, declares the Opinion of the Majority, and pronounces the Sentence which is written down by the Major, (the *Public-Prosecutor*) and signed by all the Members of the Court; and immediately thereafter, it is announced to the Prisoner."—See *Tytler*, note to p. 328. Casting Vote *for* Prisoner!

I think there is often an advantage in taking Votes in writing—as I know Officers at Courts-Martial have several times declared that they thought Voting *vivâ voce* affected the Opinions of the other Members.

Sometimes Members write long Minutes—and there can be no legal objection to the Rule; provided the Vote be read out and acknowledged: and it has the advantage of being free from *bias*—and the only *legal* objection or *doubt* raised is, when this is done *silently* and not *openly*. I have, therefore, recommended it to be legally sanctioned.

Why I prefer my plan to that used in *France* is, that the Members on the right and left *might* see what his neighbour wrote—whereas, by my plan they are *all* engaged on the same Work, and I think it is more expeditious.

(8) Since (*Civil*) Criminal Courts do nothing more than find "*Not Guilty*"; why should *Mily.* Courts record "Having maturely and deliberately weighed the Evidence, &c. &c."—what is the use of requiring a Court to take an *Oath* to determine according to the Evidence—and, then, require it in its Finding to declare that they have kept their Oath.

(9) Not finding the words "*Murder or*"—In such a Case the Judge directed Sentence of *Death* to be *recorded*, but as the Jury had acquitted of an intention to Murder, he would recommend it to the Crown to spare their Lives; but that they must expect to be sent out of this Country for the rest of their days. Before *Mr. Jus. Bosanquet*, Midland Circuit, 14th March, 1833.

It is not proper to record the "Court are *unanimously* of opinion that the Prisoner is *guilty*;" ([10]) but, a Court might, legally, do so if their Verdict be an "*Acquittal*." ([11]) That the Finding shall in *all* Cases declare the number of the *Majority* and *Minority*; ([12]) and that if the Court find "not guilty"—the Court shall record "The Court find the Prisoner "not guilty"—or, if "guilty"—the Court are of opinion that the Prisoner is "guilty."

Proposed.

VOTES AS TO THE SENTENCE.

1.—The Votes as to the *Sentence* are to be taken in the same way as in the Case of the *Finding*. The Members who have *acquitted* must Vote as to a Sentence as well as those who have *convicted*, ([13]) they, from *Jurors*, become *Judges*. But as doubts have arisen among Mily. Men who require a *Law* to satisfy their Conscience.

Proposed.

2.—That the Officers composing every Court-Martial, as well those "acquitting" as those "convicting" shall Vote as to a Punishment—and where the Punishment is appointed by Law or the Mutiny Act or Articles of War, the Finding guilty by a Majority is sufficient in all Cases: except where two-thirds must

([10]) Because the object is to conceal any opinion of the Members hostile to the Prisoner.

([11]) It may be said such would be objectionable in another way—I think decidedly not—and, that, in some Cases a full, unanimous, and hon'ble acquittal, should be known—it is due to the Prisoner—here, there is no objection.

([12]) This will prevent the *possibility* of a man being *hanged* where 8 instead of 10 out of 15 concur in a finding Guilty in the Case of Murder! the Comr. in Chief should know the number of convicting and acquitting Members. In the case of a Recommendation the number should be known—See Sir C. Morgan's Note to Tytler, p. 324—much more so where the Judgment of the Court is concerned. If the Comr. in Chief found 12 out of 13 acquitted—it might guide the judgment as to a Revision—As the Court take Votes on each Charge and Count—there would be no trouble in the Case, thus—

1st Charge,	11	out of	13,	Guilty.
2nd Do.	9	do.	13,	Not Guilty.
3rd Do.	7	do.	13,	Do., &c.

([13]) J. A. G.'s Lr. No. 256, 8th Sept. 1832—so decided in several instances—Sir C. Morgan, in his Note to Tytler, p. 311—states "It is to be observed, that every Member sworn, if present, must give his opinion upon the case; and that the *President* has only a *single* Vote."

concur in the Finding and Sentence. "The President has no double or Casting Vote."

3.—Where the Punishment is discretionary, and the Officers composing the Court Vote different Punishments, there must be a Majority of the Officers to concur in *one* Sentence—the Rule for which is laid down. ([14])

SENTENCE.

1.—The Court must consult in *Mily.* Cases, the Mutiny Act and Arts. for the King's or Company's Army—or if a Native Officer or Soldier the Native Articles of War. The different Sections or Articles of the particular Code should be written on a sheet of paper and be read out to the Court. If the Crime be *Murder* or any other non-Mily. Crime—the 102d Article of War([15])—the 4 Geo. 4, C. 81, Sec. 2—or the Govt. Penal Regns. are to be consulted, or 9 Geo. 4, C. 74.

2.—That where any Officer, Soldier, or other person tried by a General Court-Martial shall be found guilty of *Murder*, it shall be competent to such Court-Martial having passed a Sentence of Death, to recommend that the Prisoner may be "Transported for Life," ([16]) and in all other *Capital* Cases to pass a Sentence of "Transportation for Life, or a certain Term of Years;" instead of a Sentence of "Death"—Provided, also, that no Sentence of Corporal Punishment shall be Proposed.

([14]) See "*Votes*"—Miscel. Matter at the end of this work.

([15]) The 102nd Art. (Annl.) declares—"provided that, in *all* Cases where such Court shall have convicted any *Soldier* (why not *Officer* too?) of any Offence punishable with Death, it shall be lawful for such Court-Ml., instead of sentencing the Offender to *Death*, to adjudge him to be *transported* as a Felon for life or for a certain term of years."

([16]) By the Charter of Justice the Supreme Court have the power to reprieve pending a reference to the King, and by 39 and 40 of Geo. 3, persons convicted of Capital Crimes may, instead of being *executed*, be *transported* for life. This Act of Parliament and the Charter, both extend to Cases of *Murder*, which these two Sections (27 and 28—of Geo. 4, c. 74, for administr. of Criml. Justice in the E. Indies) of the present Act do not " Mr. L. Clarke's Analysis 1831 p. 78. Proposed.

The above proposition is to prevent any doubts as to Article 102 and Sect. VIII.—4 Geo. 4, c. 81—as Sect. 27 of 9 Geo. 4, c. 74—excludes the Case of *Murder*—notwithstanding there are 2 former authorities for the Supreme Court to pass a less Sentence than "*Death*"—But, the Charter of Justice and the 39 and 40 of Geo. 3, do not give such authority to a *Genl. Ct-Martial!* hence my proposition.

passed in any Case, except where the same is provided for. ([17])

Approval ([18]) of Sentence or other Decision of the Proceedings.

General. As to a *General* Court-Martial the Comr. in Chief either "*Approves*" or "*Confirms*" ([19])—or "*Disapproves*"—sometimes it is "*Not Confirmed.*" The Sentences, &c. of District Courts-Martial should be *Approved*, &c. by the Officer ordering the Trial. If the Court have *recommended* a Prisoner's Discharge with "*Ignominy*"—the wording should be thus—"Approved, &c." The *Recommendation* as to the Prisoner's Discharge with Ignominy; being subject to the Approval of H. E. the Comr. in Chief. ([20]) In the Case of *Regtl.* Cts.-Martial the Articles of War

District Ct.-Martial.

Proposed.

([17]) G. O. H. G. 24th Augt. 1833, &c. should be inserted in the Articles of War.

([18]) One writer contends that the word should be "*confirmed*"—the 72nd Annl. Art. uses the words "*authorized* to *confirm* the same, and until our or his Directions shall have been signified thereupon" (same in Sect. XIV. Art. IX. Company's Arts. War.)

But M. A., Clause 17, uses the words "from the date of *Approval* or other final Decision, &c."—Sect. XXXI. 4 Geo. 4, c. 81, "(Company's) whether any such Sentence be *approved* or not."

The Warrant from the Comr. in Chief to Genl. Officers states "which Proceedings are, &c. to be sent for my *approval*"—The Oath taken by all Members is not to divulge the Sentence—"until duly *approved*" the 79th Art. as to *Regtl. Ct.-Ml.* but no Sentence shall be executed until, &c., shall have *confirmed* the same (Sect. XIV. Art. X. *Company's* the same.)

The Advt. Genl. (Mr. Pearson) is of opinion that either "*approved*" or "*confirmed*" are equally legal!

([19]) The distinction to be made lies in this—you "*approve*" of the Finding and Sentence—and pass your approbation on the whole Proceedings; then add—"the Sentence to take effect, &c.—these words contain the "*Direction*"—see note 18.

You may "*approve*" of the "*Sentence*," and "*disapprove*" of the "*Finding*" in some respect—or of something else—here, the use of these two words would not be improper. But, it would be *inconsistent* to *approve* of the Sentence and then *disapprove* of the same thing—you may *approve* of the *Finding* and *disapprove* of the *Sentence*. If the Remarks are to apply to both *Finding* and *Sentence*—then, I would use *Confirm*—and *disapprove* of something, which still leaves sufficient legal Matter to confirm the whole.

Hence, it is not the objection *legally* to the use of either word, but on the score of *consistency*!

The Legislature uses both words. The *Directions* for the *Execution* of the Sentence are the most important.

([20]) In which case the Proceedings are sent to the Adjt. Genl. H. M.'s Forces in India—the Adjt. Genl. H. M.'s Forces at Home—or D. A. G. Madras, or M. B. K. T. Bombay.

direct the Comg. Officer to Confirm. ([21]) (See *Sentences, Miscel. Matter at the end of this Work.*)

RECOMMENDATION.

A *Majority* must concur in any Recommendation. "The Recommendation should always be written under the Sentence. ([22]) The use of the term "Unanimous" would in some Cases be but just ([23])—where *less* than the whole concur, then the President should sign under these words, " —— Officers concur in the Recommendation." Here the Prisoner and the Comr. in Chief have the benefit of knowing, say, that 14 out of 15 recommended; while the Vote or Votes of the Officer or Officers dissenting are not made known. (See *Recommendation, Miscel. Matter.*) **Majority.**

REVISION OF THE FINDING, SENTENCE, OR OPINION.

1.—If the Comr. in Chief thinks the *Finding* or *Sentence* or *Opinion* incorrect—either finding too much or too little—or that the Sentence is illegal or inadequate, he orders a Revision—which can be only *once* ([24]) —nor can any new Evidence be taken, ([25]) *i. e.* on the Charges investigated; but where a Genl. Court-Martial only examined the Evidence on 5 out of 13 **When.**

([21]) Art. 79 and Sec. XIV. Art. X.

([22]) Sir C. *Morgan* (formerly J. A. G.) note to *Tytler*, p. 324—Sir C. adds, "together with the signatures of the several Members so recommending; for it is very possible, that a detached paper may be lost, mislaid, or forgotten." There is an objection to *any* names appearing except the *President's*—he only signs the Sentence. The object is to conceal from the Prisoner, who is entitled to a Copy of the Proceedings, the names of those who do *not* concur in such Recommendation. It has been recommended by a J. A. that where the *whole* Court concur the *President* should sign only—where any less number, that the Members *concurring*, should sign.

I propose that the President should sign these words, "—— Officers concur in the Recommendation." If the object were to know if *certain* Officers recommended, it is clear the object would be gained at a great sacrifice.

In the *Navy* the *Sentence* is signed by all the Members—*McArthur*, vol. 1, p. 150.

([23]) Tytler, p. 324, says "there can be no impropriety," and that it gives more weight.

([24]) Clause 16 Annl. M. A., and Sect. XVI.—4 Geo. 4, C. 81.

([25]) G. O. C. C. 1st June, 1815—and Clause 16, M. A.

Charges, ([26]) they were directed to revise and take Evidence on the 8 remaining Charges. ([27]) The Revision is sometimes not ordered when it may be inconvient; there being no *illegality* to correct; the question of *expediency* being in point. As a question has been raised whether, if a Court of 15, tried a Prisoner, a Revision could be had legally with 13, 13 Officers being the legal number to constitute a Genl. Court-Martial. ([28])

Proposed. 2.—That the Finding, Sentence, or Opinion of no Court-Martial shall not be revised more than once. That it shall be competent to any Court-Martial to revise their Finding, Sentence, or Opinion with a *less* than the original number of Officers sworn and composing the Court-Martial; provided, that there be the *legal* number of Officers present; the cause of the Absence of the Absentees being duly accounted for. That no Evidence shall be taken on such Revision, unless the Court shall not have exhausted the whole of the Charges. (See *Revision* and *Incidents* in Miscel. Matter at the end of this Work.)

([26]&[27]) Col. Cawthorne's Trial—though he was Cashiered on the Evidence taken—(but 1st, the Court must exhaust the whole of the Charges —2dly, the Finding and Sentence might not have been borne out by the Evidence on the 5 Charges)—J. A. G. Lt. H. G. 21st Jany. 1796.

([28]) It has been contended that by the absence of 2 Members the *Minority* might become the *Majority*. Thus, out of 15—10 find guilty —and 5 acquit—take 2 from 10—and 8 would convict—and be 8 to 5 —but if one of each, then would be 9 to 4—or if 2 out of the 5—10 to 3.

The Opinion given by a former J. A. G. to a D. J. A. G. was that "the whole of the Members who had voted on the Trial must be present. Those who passed the Sentence are directed to revise it; if revised by a *smaller* Majority; that the *Minority* might become the *Majority*; and the revised Sentence be different from the Original one; though all the Members should retain their opinion on which it was founded." Lt. J. A. G. 4th May, 1816, concurred in by Advt. Genl.

An Officer once disputed whether having *more* than 13 Officers was legal—but, the words "not *less* than 13, &c." clearly give the power to add—by "Custom of the Army"—though we find in committees "competent to add to their Number," is expressed—still leaving a legal *Quorum* of less than the whole. The question here, is whether 13 Officers, being the *legal* number, can they—though there were 15 Officers sworn on the Trial—revise without the other 2.

Sect. XXII. 4 Geo. 4, c. 81—requires, for instance a Genl. Ct.-Ml. to consist of 13 Officers in the Company's Provinces,—to Sentence to *Death*, or *Transportation*. Now, suppose, 10 out of 15 did pass a Sentence of *Death*—and 2 Members are not present. there are 13 to revise, 9 are 2-3rds, here, there must be 9 to concur. If 2 of the 10 were absent, it would be in favor of the *Prisoner*—If 2 out of the *Minority*, the *Majority* will be increased—but the absence of 2

Court of Inquiry; in Mily. Cases.

1.—The Prerogative of the Crown to hold Courts of Inquiry is too well known to admit of any thing being said on the subject. The *Right* was called in question; but decided in the affirmative. (1) The only mention we have in the Articles of War is in Art. (Annl.) 82. (2) My present object is to recommend a Legislative Enactment; not to affect the Right of the Prerogative, but to render legal some provisions which seem requisite. The Court is usually composed of 5 or 3 Officers, but might be of any number; there being no limit by authority.

2.—My object is not, in all Cases, to make the Court similar to a Grand Jury, for in ordinary Cases, the Evidence being taken on *both* sides may be satisfactory, and prevent the necessity for a Trial. The points I wish to be decided are—1st, whether an Officer, having been a Member of such Court, should afterwards be a Member of the Genl. Ct.-Martial to try the same Case he having given an opinion—the public Service being considered—2d, whether the Court should give an opinion—and if not, then, whether such Officer should be a Member on the Trial.

3.—That no Officer who shall have been a President Proposed.
or Member of a Court of Inquiry held to investigate

cannot bear against the Prisoner, as 2 out of 10 leaving 8 cannot Sentence to *Death*—7 or 8 can *Transport*—so that in no case, can the Prisoner suffer capitally—1st, If you take 1 or 2 Officers from the *Majority*, he gets less punishment—2d, If you take 1 or 2 from the *Minority*, the effect is not to increase the Sentence in *kind*. If the Court were 14, and 7 convicted and 7 acquitted—there could be no conviction—take away one from those acquitting, and he might be convicted—7 to 6—this is the only case—Life cannot be affected—the Prisoner might be found Guilty. But the *Revision might* lead to a change in some Members—It is to be supposed that where there were 7 to 7—the Verdict might, by 1 less be 7 to 6, or might be 8 to 5 in the Prisoner's favor—the extra Members are only to secure 13. Suppose the 2 Members were dead, there is no Authority to have a new Trial—13 being a legal number of Officers. If the Members were prevented by Sickness, or distance, from revising—if desired, the Votes of the Absentees might be counted in their favor—the J. A. keeping the Votes till the *Approval*, &c. of the Sentence in Orders.

(1) *Home* v. *Bentinck*—Exchequer Chamber, 17th June, 1820—See Case 11 in my 2d Work (1825) p. 431.

(2) A Regtl. Court of Inquiry of Three Officers to receive proof of the fact of "*Desertions.*"

into any Mily. Case, as to whether or not there be grounds for the Trial of the accused by a Court-Martial, shall be the President or Member of such Ct.-Martial if such Officer shall have given an opinion on the Court of Inquiry—but, that if he shall not have given an opinion he may be a Member on such Court-Martial, if the exigency of the Service require it—*Provided* that he shall be subject to *Challenge* in the usual way (3)—*Provided*, also, that no Court of Inquiry shall be called upon to give an opinion, (4) except in Cases where the object is to ascertain the value of property, (5) the Services, or Claim to Pensions, of Officers or Soldiers, (6) or as to any Claim of Officers or Soldiers, or in the Case of Loss of Treasure. (7)

Proposed. 4.—That every Court of Inquiry shall consist of 5, and of not less than 3 Officers, and of the same rank as is directed for Courts-Martial. Charges and Instructions to be laid before every such Court. And the President and Members shall make the following Declaration:

Declaration. "I, A. B., do declare upon my Honor, that I will duly and impartially inquire into the Matters to be brought before this Court: [and (*where an opinion is to be given*) that I will not, at any Time, discover my own vote or opinion, or that of the President or of any Member; unless required to do so by competent Authority,"] (8) (nor if the Court be a closed Court, will I discover the Proceedings.)

Proposed. 5.—That all Witnesses duly summoned are to attend such Courts; and all Witnesses so duly summoned who shall not attend on such Courts, or attending shall refuse to give Evidence, shall be liable to attachment in the same manner as Witnesses before Cts.-Martial.

(3) Tho' no opinion be *given*, the *forming* one creates equally a bias, but in ordinary Mily. Cases (Mutinous, Insubordinate Conduct, &c.) the Evidence is usually so clear as to render the objection of less force.

(4) What is the use of giving an opinion, in such Cases, the Comr. in Chief or Genl. Officer, &c. can easily see if there are grounds for trial or not.

(5) Valuation of Houses, &c.

(6) Anul. Arts. 87, 88.

(7) To ascertain if money is lost by neglect out of a Treasure Chest, G. O. G. G. in C. 30th Sept. and C. C. 5th October 1820.

(8) Similar to Art. 88.

6.—That such Courts shall record the Evidence as at Courts-Martial. That the Accused shall be present, and may cross-examine and examine any of the Witnesses—or make any statement. And that the President and Members of such Court shall sign the Proceedings. **Proposed.**

7.—That the Witnesses shall not be examined on Oath. That the Court shall be an *open* or *closed* Court; according to the Custom of War. (9) **Proposed.**

8.—That no person accused can demand a Copy of the Proceedings. That in Cases relating to the Valuation of Property, or the like, the parties interested may have a Copy; paying reasonably for the same. **Proposed.**

9.—A Majority to decide all Questions. The President no double or Casting Vote. **Proposed.**

SWORN COURT OF INQUIRY—TO INVESTIGATE CASES OF MURDER, &c.

1.—In the Case of Persons accused of *Murder* or of other Capital Crimes, or of Crimes which are triable by General Courts-Martial at places situated beyond 120 miles from the Cities of Calcutta, Madras, or Bombay, instead of being arraigned before the Supreme Courts. (10)—it seems advisable that, according to the Law in the Case of the Grand Jury, a more solemn Investigation should take place before such person is put on his Trial. For, in all practicable Cases, the *odium* of a Trial should be avoided; unless the *necessity* shall be decided by the *Oath* of Witnesses. There is a Mily. Court of *Inquest* held at all Stations, where the body is to be found; where not found, the Investigation is by a Court of Inquiry. Indeed, if even there were an Inquest held, circumstances may not come out so fully as to fix guilt on the actual Murderer, or as to others afterwards accused, &c., hence both Procedures may be required. (11)

(9) In the "Cintra Convention" Case it was an *open* Court. In that of the Special Court of Inquiry, at Meerut, in 1815 ("*Kalunga*" affair) a *closed* Court.

(10) 4 Geo. 4 c. 81. s. 2—Art. 102.

(11) "It is usual to prefer an Indictment (which is investigated by a Grand Jury) also, against the party charged by the Coroner's Inquisition."—Jervis's Coroner, 1829, p. 288.

Proposed. 2.—That where a Court of Inquiry shall be held to inquire as to whether there are grounds for trying any Officer, Soldier, or other person, on a Charge of *Murder*, or Capital or other Felony, or (*Civil*) Misdemeanor of great importance, the Court shall be called a "*Sworn Court of Inquiry*," and consist of 5, and of not less than 3 Officers. That the President, Members and Interpreter, (if one be required) shall be sworn, and the Witnesses for the Prosecution only shall be examined, and on Oath, or Solemn Declaration. The Witnesses for the accused shall not be examined—that the accused shall not be present ([12]) as a matter of *Right*; but at the *discretion* of the Court, but shall be informed of the nature and facts of the Evidence given against him—being brought before the Court for such purpose; or the substance of the Evidence shall be read to him in his place of Confinement.

Proposed. 3.—That the President and Members shall take the following Oath—(*if a closed Court*):

I, A. B., do swear that I will not discover the Evidence given before this Court, unless required to do so in a Court of Justice, or before a Court-Martial.

So help me God.

Proposed. 4.—That no Officer composing such Court of Inquiry shall be the President or Member of any Court-Martial to try the accused.

Proposed. 5.—That the President and Members shall sign the Proceedings of the said "Sworn Court of Inquiry." ([13])

Where a Grand Jury threw out a Bill of Indictment for Murder—The Prisoner was tried on the Coroner's Inquisition, under 9 Geo. 4, c. 74, s. 5. "It not being considered advisable to discharge a Prisoner from custody in the face of the Verdict of the Croner's Jury, without a Verdict of Acquittal by another Jury." Trial of *Doorga Tewarree* for Murder—Supreme Court, Calcutta, 18th March 1831, before the 3 Judges.

There may be a *new* Bill presented—*Archbold*, p. 34, but the more usual course is, if a true Bill for *Murder* be not found; to present one for *Manslaughter*; or one less in degree.

([12]) Not allowed at Grand Juries. I would allow his presence, there being no danger of flight—or tampering with Witnesses—see note 8—*Inquests*—p. 176.

([13]) To ask a Court of Inquiry to give an opinion in *Mily.* Cases, would be to suppose the Comr. in Chief, Genl., &c. Officer to be incompetent to judge in a case affecting *Discipline*—The object is to collect *facts* for the exercise of *his* judgment.

6.—That the Proceedings of all Courts of Inquiry may be revised as often as may be required, and may take fresh Evidence. Proposed.

7.—That a Court of Inquiry may be held after any lapse of Time. Proposed.

Court of Inquest.

1.—In the Bengal Army *Inquests* are ordered to be held in all Cases of "*sudden, unnatural* Death, or of "death attended with circumstances of a *suspicious* "nature and a minute investigation and a full Report "of the result to be made to the Officer Comg. the Divi- "sion. The Committee to consist of two experienced "Officers, and of any Medical Officer the Comg. "Officer may appoint." ([1])

2.—The above Circular is not a sufficient Guide—nor is a Court of Inquiry exactly similar—the nature of the Case requires Legislative Enactment and Powers—I therefore propose—that in all Cases of death, in a *sudden, unnatural,* or *suspicious* manner in any Regt. or Regtl. Bazar, the Commanding Proposed.

In the Case of *Murder*, &c. even, I do not see *why* the "*Sworn* Court of Inquiry" should give an *Opinion*.

The parallel between the Grand Jury and the proposed Sworn Court of Inquiry is in the examination of Witnesses on Oath for the Crown only.

The Grand Jury are to find a true Bill, or not a true Bill—The private individual injured, or Counsel for the Crown, must go before the Grand Jury—the Atty. Genl. cannot legally, interfere, beyond presenting a fresh Indictment. The Grand Jury are to determine if there shall be a trial or not.

In *Mily.* Cases, the Comr. in Chief;—or General Officer (in the Case of N. C. O. or Soldiers) must have a Court of Inquiry to show grounds for a trial—If the Court give an opinion erroneously that there are *not* grounds—the Court may be ordered to revise—the Court may still retain their opinion—The Comr. in Chief may still order the trial—He has better means of knowing the legal effect of the Evidence, &c.—There is the J. A. G. to consult and the Law Authorities—The Mily. Court has not like the Grand Jury; a charge from the Judge to assist them—so that the Court's opinion cannot in all Cases (involving the legal effect of Evidence, &c.) give a just opinion—as where they hear the Evidence on both sides on the trial —(See Note 4).

([1]) Circular A. G. O. No. 267, 7th March, and No. 1361, 19th August, 1829.

Officer of the Regt. shall hold a Court of Inquest ([2]) (if practicable, if not to be a Station, &c. Court) to be composed of a Field Officer or Capt. as President, and of two Officers of not less standing than 5 years as Commissioned Officers, (in all practicable Cases,) as Members. If the deceased belonged to no Regt. or Dett. in which an Inquest can be held, an Application is to be made to the Officer Comg. the Station, &c. The Medical Officer of the Regt. or other Medical Officer attending, shall examine the body of the deceased on the spot where it was found, (in all practicable Cases) and in the presence of the Court of Inquest—after which the Court may adjourn to the President's Quarters (or

Members, &c. to any other place.) The President and Members shall take the following Oath, *(when a closed Court)*:

Oath. I, A. B., do swear that I will not discover the Evidence given before this Court, unless required to do so in a Court of Justice, or before a Court Martial.

So help me God.

Witnesses. 3.—That the President may summon any Witnesses, and any Witnesses duly summoned and not attending, or attending and refusing to give Evidence, shall be liable to an attachment in the same way as Witnesses summoned and not attending, &c. before Courts Martial. ([3]) In Cases of Witnesses being Non-Mily. persons, the Magistrate or other Civil Officer, shall immediately cause all such Summonses to be served on the parties therein named and summoned.

Oath. That all Witnesses shall be examined on Oath, or Solemn Declaration.

4.—That it shall be competent to the Court to sit

Sit any day or hour. at any hour and even on Sundays ([4])—and to confine any person, on the instant, suspected to be a party concerned in any Murder, or of having caused Death under suspicious circumstances, reporting the same to the

([2]) Owing to the state of a body in Warm Weather, such has usually been done Regimentally.

([3]) Clause 15 M. A.; and 4 Geo. 4, c. 81, s. 27. Witnesses before Coroner's Inquests are sworn.

([4]) Must be often done in *India*—has been even in *England* (in August, 1831)—See Case 17, p. 117, my 3d Work, (1834)—though *Jervis*, p. 212—says it is not *legal*; it may not be as to a *Deodand*, but we have no *Deodands*.

Comg. Officer. (5) And since there is no Coroner in India, except at the Cities of Calcutta, Madras, and Bombay, it shall be competent to a Mily. Court to hold an Inquest on any body found within the limits of any Mily. Cantonment, Post, or Camp, though the deceased may not have belonged to the Troops, or may not be a Camp Follower attached to the Troops, or to any Bazar, but shall be a person who was under the protection of the Civil Power, or have belonged to any other Presidency, or to any State in alliance with the E. I. Company or H. M.'s Govt.—*Provided*, that in all Cases requiring the aid of the Civil Power, or where the further investigation of the Case may be required before the Civil Authorities—a Report shall be made without delay to such Civil Authorities—and, if any person or persons be implicated or suspected to be concerned in any Murder, an application shall be made, direct to the Civil Authorities: and a Report thereof, and of all the Court's Procdgs. shall be made to the Comg. Officer.

5.—It is declared by the 9 Geo. 4, C. 74, S. 5—"That every Coroner, upon any Inquisition before "him taken, whereby any Person shall be indicted for "*Manslaughter* or *Murder*, or as an Accessary to "Murder before the Fact,—shall put in writing the "Evidence given to the Jury before him, *or as much "thereof as shall be Material*, and shall have Autho-"rity to bind, by Recognizance, (6) all such persons "as know or declare anything Material touching the "said Manslaughter or Murder, or the said Offence "of being Accessary to Murder, to appear" (7) at the Trial.

(5) There are Cases which would clearly warrant this Measure—A Coroner is authorized to do so.

(6) In the Case of Non-Mily. Persons, such persons should be secured and be reported to the Civil Authority for such purpose.

(7) "At the next Court of O. and T. or Gaol Delivery, or Superior Criminal Court or Sessions, at which the Trial is to be, then and there to prosecute or give Evidence against the Party charged; and every such Coroner shall certify and subscribe the same Evidence, and all such Recognizances, and also the Inquisition before him taken, and shall deliver the same to the proper Officer of the Court in which the Trial is to be, before or at the opening of the Court."

Proposed. That every Mily. Inquest shall record all *Material* Evidence in writing, and shall obtain such information by a view of any premises, and by searching thereof, or any places, or property, so as to afford traces of any marks of blood, or clothes, or property belonging to the deceased, or accused, or suspected or other person, which property, &c. shall be minutely examined, secured and placed under the Seal of the President.

Proposed. 6.—Where the body shall be found at a distance from the residence of the deceased, or shall be found drowned, or in any well, or in any place—the position of the body and of the place to be minutely described—and such of the persons residing in the Vicinity shall be examined as can give any Material Evidence relating to the cause of Death.

Proposed. 7.—That the accused or suspected person shall be present or not at the discretion of the Court—which discretion shall be governed by the means of securing the person of such accused or suspected person, and prevent his or her eluding Justice by flight. (8) Therefore all accused or suspected persons shall be securely confined and watched, to prevent their flight, or tampering with the Witnesses or any other person.

Proposed. 8.—That the Court shall be open or closed as the circumstances of the case may require—to prevent facts being known to those who might obstruct Justice. (9) That Evidence may be heard on both Sides. (10)

Proposed. 9.—That a full Description of the person, Sex, age, late Trade, occupation, Corps, &c. to which the deceased belonged shall be recorded—as well as (if a

(8) *Jervis's Coroner*, p. 220, "It may be requisite that the party suspected should not, in so early a Stage, be informed of the suspicion that may be entertained against him; and of the Evidence upon which that Suspicion is founded, lest he should elude justice by flight, by tampering with the Witnesses, or by any other means."

(9) *Jervis*, p. 220, "of the necessity for this privacy or exclusion, the Coroner is the Judge."

(10) "It is true, that the Coroner is bound to hear the Evidence on *both* sides—because the inquiry, how the party came to his death, cannot be truly satisfied, unless all the Witnesses who know any thing of the death be examined."—*Jervis*, p. 217.

Sometimes, though a Grand Jury throw out a Bill of Indictment, a Trial is held on the Coroner's Inquisition. In the Case of the "*Sworn* Court of Inquiry," I propose no *opinion* to be given, but here "a *full report*" is to be given.

stranger or non-resident of the place or not), any account as to his or her relations or friends, or residence, to whom a report shall be made.

10.—That a full Medical ([11]) description as to the cause of Death, the nature of the Wounds, the position and appearance of the body when first viewed, including (when necessary,) the opening the body—and the examination of other Medical Men—and the state of the clothes of the deceased, or want thereof, or if there were any persons or weapons, &c. near the body—shall be fully recorded. Proposed.

11.—That the Court shall inquire of the persons residing in the house, &c. where the deceased lived, and particularly from the relations or friends of the deceased, or other persons touching any Quarrel—and as to the state of the mind of the deceased—as well as to any dying declarations, or expressions made use of by the deceased. Proposed.

12.—That the Opinion of the Court shall be determined by a Majority; the President having no double or Casting Vote. Proposed.

13.—" Sane persons who commit *Suicide* are directed to be entered in the consecrated burying-ground, after night-fall; ([12]) [but

([11]) *Dr. G. Smith*, recommends a division of labor amongst Medical Men, in Cases of doubt, or of importance. Medical Jurisprudence, p. 140.

([12]) [But without funeral rites] I should propose to omit, as the late *Bishop Turner*, of Calcutta, recommended, that the *Church Service* should be read over *Suicides* at their Interment. It is declared in " the order for the Burial of the Dead" ¶ " Here it is to be noted, that the Office ensuing is not to be used for any that die *unbaptized*, or *excommunicate*, or have laid *violent hands* upon *themselves*."

Of which latter " are to be understood, not all who have procured death unto themselves, but who have done it voluntarily, and consequently have died in the commission of a mortal sin; and not idiots, lunatics, or persons otherwise of insane mind. The proper judges, whether persons, who died by their own hands, were out of their senses, are the Coroner's jury. The Minister of the parish hath no authority to be present at viewing the body, or to summon or examine witnesses. And therefore he is not entitled, nor able, to judge in the affair: but may well acquiesce in the public determination without making a private inquiry. Indeed, were he to make one, the opinion, which he might form from thence, could usually be grounded only on common discourse and bare assertion. And it cannot be justifiable to act on these, in contradiction to the decision of a jury after hearing witnesses on Oath. And though there may be reason

without funeral rites; or any Military honors whatever."] ([13])

Proposed. 14.—VERDICT.—The Verdict shall be by a Majority—the President no double or Casting Vote. The Verdict shall be recorded in simple language thus:—

"The Court are of opinion from a View of the Body, ([14]) and description of the Wounds, (*or other circumstances to be stated*) that the deceased (*his rank*

to suppose, that the Coroner's jury are frequently favorable in their judgment, in consideration of the circumstances of the deceased's family with respect to the forfeiture, and their verdict is in its own nature traversable; yet the burial may not be delayed, until that matter upon trial shall finally be determined. But, on *acquittal* of the crime of *self-murder* by the Coroner's jury the body in that Case not being demanded by the *Law*, it seemeth the *Clergyman may* and *ought* to admit that body to *Christian* burial (*Dr. Burn*, see *Mant's* Book of Common Prayer p. 487.) "On the other hand it has been contended, as to the *Coroner's Warrant*, (I take that to be no more than a *Certificate*), that the body is not demanded by the law, and that therefore the relations may dispose of it as they please (*Wheatly* do. p. 487).

It is said that the words (after earth to earth, ashes to ashes, dust to dust) "in the *sure and certain hope* of the Resurrection to eternal life," p. 496, used when the earth shall be cast upon the Coffin—cannot be used in the Case of a *Suicide*: but it is remarked by "*Wheatly*" not that we believe that *every one* we bury shall rise again to joy and felicity, or profess this "*sure and certain hope*" of the Resurrection of the person who is *now* interred. It is not *his* Resurrection, but *the* Resurrection, that is here expressed: nor do we go on to mention the change of *his* body in the singular number, but of "*our* vile body," which conprehends the bodies of Christians in general," p. 495 *Mant's* Prayer Book.

([13]) The words ["but without any Mily. honors whatever] I should propose to leave out. G. O. C. C. 24th Sept. 1829. "Not that the *dead* are anything the *better* for the *honors* which we perform to their Corpses—*Dean Comber. Wheatly.* (*Mant's* do. p. 485)

The Scotch (*Presbyterians*) do not read any service over the dead.

I would say to Christians—"*Judge not that ye be not Judged, for with what Judgment ye Judge, ye shall be Judged.*" Matth. vii. 1, 2—"*Whether we live therefore, or die, we are the Lord's. For to this end Christ both died and rose, and revived, that he might be Lord both of the dead and living.*" (Romans xiv. 8, 9.)

Who can say whether a man was *insane* or not when he destroyed himself—no human being can say when God may visit any one with *Insanity!* I doubt much the *sanity* of those who refuse Christian burial to any human being; their *Charity* I must more than doubt.

That a Man's property should be forfeited to the Crown, and his Widow and family starve, is a law unbecoming a *Christian* Country! that it is only applied to the Case of a *poor* Man is *worse* than *unchristian*. (See Case quoted in my 3rd Work, 1834, Case 17, and note 71, p. 117.)

([14]) This is legally necessary—*Jervis*, p. 246.

or occupation to be described) was killed by the Act of ————(description of his person)—by kicking, striking, poisoning, shooting, cutting, &c. by blows inflicted on the body, head, &c. ([15]) or, that the deceased died a natural Death ; or, was killed by a person, or persons unknown, and who has (*if so*) since absconded and cannot be found ; or, that the deceased was killed by the fall of a House, by a Cart running over him or her—or, that the deceased destroyed himself or herself by accident—or by shooting, strangling, drowning, &c. being delirious and out of his, &c. mind, or labouring under aberration of mind. ([16]) (*At present a Certificate,* being *a Copy of the Verdict, is required by the Mily. Chaplain to certify whether the* deceased, *being sane, committed* Suicide.)

15.—That the Verdict shall be signed by the President and all the Members, that the Proceedings may be revised and fresh Evidence taken as often as may be required. That the Court may examine such Medical Men and other Witnesses as they may think necessary. Proposed.

([15]) Whether the Case will amount to *Murder*, *Manslaughter*, &c. to be determined by the Comr. in Chief, or Genl. Officer who is to order the trial—A Mily. Inquest is merely to ascertain the *Cause* of Death.

([16]) I have in para. 13—inserted an order regarding *some* persons committing *Suicide*—but I do not recommend it to form part of the rules for an Inquest—I deem it impossible to determine when Insanity may be visited on any one. It is prejudging as person whose state of mind can only be known with certainty to his Maker! The Verdict and its consequences may distress the feelings of his family, and beggar his widow and children—but it never can prevent an Act which originates in causes often unknown—and in which "human wisdom is ignorance."—It is punishing the innocent for the *presumed-*Guilty.

The Depy. Coroner of Westminster (*Mr. Higgs*), stated there to have been 489 Suicides in 20 years in Westminster—or 24 a year—

		Population.
1811,	....	160,801
1821,	....	181,444
1831,	....	202,809

In *Ceylon* out of a Population of more than a Million—12 a year—*Calcutta Courier*, 13th March, 1831.

It is not stated how many were felo de se—but it is clear that the number is not great, and that most Suicides have arisen from Commercial failures or other losses, producing it must be supposed, *mental derangement !* I hope to see "*felo de se*" no longer used in the Verdict of any Coroner's Jury.

Proposed. 16.—A Copy of the Proceedings of Inquests may be given to the friends of the deceased on application—paying reasonably for the same. And a Copy to be sent to the Civil Authorites in all Cases where the aid of the Civil Power, or any further investigation may be necessary, before the Civil Authorities.

Proposed. 17.—That if the Death of the deceased shall have been caused by the negligence, or furious driving of any Carriage or Cart, or other conveyance by the owner thereof, or by his servant, &c. on the Court certifying the fact, it shall direct the owner or owners thereof or other person to pay a *Deodand* or *Fine* to Govt. not exceeding in Value 100 Rs. to be levied by order of the Comg. Officer of the Station.

Mily. Courts of Requests.

Utility of. 1.—The Courts of Requests are of some Antiquity, (1) and of great Utility, (2) I have before (3) recited and given an improved version of Section 57—4 Geo. 4, C. 81, under which our Mily. Courts of Requests are held; which Section was framed, as to amount, conformably to the Calcutta Court of Requests. I have in my last Work (4) given a considerable Chapter and a great number of Cases, and having proposed an alteration in the above Section; I shall now endeavour to state what are the usual Rules of Practice; and where none are laid down, to point out some which may be usefully applied.

Should sit the whole month. 2.—The Mily. Courts of Requests must sit once a month at least; at some Stations they do *before* the Issue of Pay, at others, *on* or *after* the Issue of Pay. In the Calcutta Court they sit on *Mondays, Wednesdays*, and *Fridays*. (5) I propose that all Mily. Courts of Requests shall be appointed to act for the ensuing month—their duty to begin on the 1st and end on the

(1) 9 Hen. 8. A. D. 1517.
(2) "The time and expense of obtaining this Summary redress are very inconsiderable, which make it a great benefit to trade."—*Black*, vol. 3. 81.
(3) p. 32.
(4) p. 173—pubd. in 1834.
(5) The London Courts sit twice a week.—*Black*, vol. 3. 81.

last day of each month. That they shall meet on the 1st day to register any Cases, and that Summonses be issued (6) for the appearance of the Deft. and Witnesses 2 or 3 days afterwards. (7)

3.—That the Court being an open Court, all Claims shall be made in open Court; and shall not be registered by the Major of Brigade, or Station, &c. Staff. (8) That there be a Register kept, (9) and each Case to be numbered, 1, 2, 3, &c. of each month. That there shall be an *Index* of the names of the Pltffs. and Defts. Alphabetically arranged—to enable the Court to refer to any Case, and see if it has been before decided on. (10) That all Decrees requiring to be carried into effect by order of the Comg. Officer of the Station, &c. shall be published in Station, &c. Orders as soon as practicable. (11) Claims in open Court.

4.—That there shall be only one Court of Requests at each Station, &c.—there being 2 Native Officers appointed as *Assessors* (12) added to the European Court. That all Half Castes or Native Christians be considered in the decision of Causes as Europeans. That the Cases of Foreigners and others not Natives of the Company's possessions in India, shall be treated as the Cases of Europeans. (13) In the Case of Native against Native to be decided on as obtains in practice in the Calcutta Court of Requests. (14) Only one Court.

(6) In Calcutta Summonses are returnable on Mondays, Wednesdays, and Fridays.

(7) If the Deft. requires longer time, he should have it.

(8) The M. B., &c. registering Claims is adopted at some Stations to save the Court trouble—It was objected to by Lord Combermere, when Comr. in Chief, as improper to allow any individual to have the power to reject any Case—as contrary to open and fair justice.

(9) Of Foolscap sized paper. To have a margin and double Column for Claims and Decrees.

(10) This will save much trouble, as Claims are often brought forward, more than once.

(11) The present mode of publishing 40 or 50 pages folio, all at once, in orders, is objectionable.

(12) Before recommended, see p. 182. Note 20 of my Work (1834)—As the Native Court, consists usually of 5 Native Officers, I save 3 Officers—besides the European Suptg. Officer and Interpreter—in all 5 Officers are available for other duties!

(13) As Foreigners are in all Countries subject to the Laws of the Country they are residing in.

(14) See at the end of this Article.

Any one Pltff. except.

5.—That any person may sue as Pltff., if not an Enemy or Rebel against the Govt. That a Pltff. may sue by his Attorney or Agent, the Attorney or Agent producing due Authority in writing. That where Shopkeepers, &c. shall sue a person living at any other Station or Place they shall (in all practicable Cases,) employ some person residing where the Deft. then is, to prosecute the Cause in the Court of Requests; being furnished with necessary Documents and Vouchers to support the Claim. ([15]) That Natives, as well as Europeans, may sue by their Vakeel or other Agent if authorized in writing.

May sue for less.

6.—That a Pltff. may sue for a Debt greater than the limited Amt., provided he releases and quits his Claim to the Overplus. ([16]) That where a Pltff. has a Debt due him by Deft. which exceeds the Amt. limited, he cannot divide his Debt into two or more parts or Claims so as to reduce each within the limited Amt. ([17]) But, if he sells to Deft. several kinds of Property, and obtains Promissory Notes payable at different dates for Articles sold beyond the value of the limited Amt. claimable; he may sue upon such separate and several Promissory Notes. ([18]) If Pltff. owes Deft. a Debt, or balance unconnected with the Debt sued for, the Deft. must sue Pltff. in a separate Action. ([19]) But if Deft. has any Claim arising out of the Debt sued for, he shall have an off-set against such Debt.

Non-Suit on Merits.

7.—A Pltff. Non-suited upon the merits of the Case, cannot sue again in the same cause. But, if Non-suited owing to the absence of necessary Documents or Witnesses, the Case may be reheard.

Statute of Limitation.

8.—The *Statute* of *Limitation* is the guide for the Court, and all Debts unclaimed are, at the expiration of 6 years, not legally claimable; unless Pltff. has revived his Debt by demand, or Deft. has acknow-

([15]) Instead of sending such Claims to the Station, &c. Staff.

([16]) Practice of Calcutta Court.

([17]) Practice of Calcutta Court; and in the Madras Mily. Cts. of Requests (1835).

([18]) Calcutta Court.

([19]) The Evidence on the 2 Cases being distinct.

ledged it. ([20]) But Limitation may be as to a part only, and the other part may be decreed. ([21]) Provided always, that it shall be competent to reduce the period of Limitation in the Case of N. C. O. and Soldiers. ([22])

9.—That, unless otherwise agreed upon, in all Claims of Servants for Wages due, a month's notice or warning shall be an understood Agreement between Servant and Master, (unless it be waved by the consent of both parties). If a Servant leaves without such warning or notice, he shall forfeit a month's Wages—and if the Master discharge the Servant without such warning, &c. he shall pay the Servant a month's Wages—the month to be reckoned from the day of leaving, or of the discharge without such warning, &c. **Servants' Wages.** **Warning.**

10.—*Set-off* ([23])—An open account shall be no set-off against a Bond or Bill, nor against a Claim for House-rent, or the like. Things of equal preference in Law can only be received as sets-off against each other. **Set-off.**

11.—*Set-off* ([23])—No deduction can be made from a Servant's Wages on account of Sickness. Nor, if unjustly confined on suspicion and released, if he declines to return to his duty. A Deduction in the Case of the Desertion of a Servant, to the extent of half or a whole month's Wages. If a Servant be hired, and not employed, he is entitled to his Wages—Deductions may be made from a Servant's Wages, for Articles lost, or wilfully damaged, thro' neglect. **Set-off.**

12.—*Jurisdiction* ([23])—As to all manner of *Actions, Plaints, Suits,* and *Controversies* for any debts, dues, or demands, not exceeding 400 Sa. Rs., as the Court may find to stand with *Equity* and *Good Conscience,* subject to the Control of H. M.'s Supreme Court at Fort William. **Jurisdiction.**

13.—([24]) Where a person derives the means of support from (Calcutta) the place where the Court is held, **Livelihood.**

([20]) 21 Jac. I. c. 16. and Calcutta Court—"but as they are Courts of Conscience they act upon the Conviction often, that if a debt were just, it would have been demanded, and brought to trial, long before it is prescribed by the Statute—such long delay as the Statute allows, would in almost all Cases of small debts, be a very strong and suspicious circumstance against the demand, and throw all proof on the Pltff."

([21]) Shaw v. Anderson, K. B. in Banco, 25th Jany. 1833.

([22]) If they are to be liable to these Courts, I would reduce the period to 6 months.

([23]) Calcutta Court.

though living beyond the Jurisdiction, such person may be sued. ([24])

Residence. 14.—That *all* persons by a *residence* in any Mily. Cantonment, or Bazar, whether such residence be permanent or temporary, shall be amenable to the Mily. Court of Requests. As well as all persons, tho' not registered, or the persons not licensed to reside in the particular part of the Country ([25])—shall, if resident, be amenable to the said Court. And if any

([24]) The Rules of the London Court under 39 and 40 Geo. 3, c. 104 —render amenable "any person residing or inhabiting within the City of London, or its Liberties, or keeping any house, warehouse, shop, shed, stall, or stand, or *seeking a livelihood*, or trading, or dealing within the same City."

As to an *Inhabitant* amenable to the *Jurisdiction* of the *Supreme Court*—in the Case of *Khamah Dosee* v. *Seebpersaud Bose*, Sup. Ct 22d June 1836. The C. J. (Sir E. Ryan) said—"The Deft. had resided there (in the house in Calcutta) up to within a few months, while all his family continued residing there, and all his Establishment of Servants. This house was his *Domicile*, and wherever that was, he was constructively an inhabitant of that place. This had always been considered a good ground of Jurisdiction." (*26th Plea Rule*.)

It is said "All Services must be performed within the *pale* of the Court. If a man resides in *Bordesley*, and Works in *Birmingham*, he may be served where he Works, but that Service must be personal, because it is not his *abode*; but if he is Master of the shop, it is considered as his home."

"Should a person *reside* in the Manor of Edgbaston, and *rent a garden* in that of *Birmingham*, he is liable to sue and be sued; the Man of *Birmingham* may easily be served at his *abode*; but the Man at Edgbaston cannot. He may be served if found in the district, but the Service must be *personal*. The Summons cannot be left at his *garden*, because it is not his *abode*."

"A Family retired to *Bordesley* to avoid the Court; but it appeared that the *Wife* worked in a *Shop* at *Birmingham*, she was served with an order at the Shop, and as the husband and wife are considered one, the Service was deemed good." *Hutton* on the *Birmingham* Cts. Requests, (1787) p. 27.

"A person who resided at *S[illegible]y*, was sued, "he *sought* a livelihood in *Birmingham*;" but altho' the Pltff. procured an order, he was not able to serve it."

"Another was an inhabitant of *Hales-Owen*, but possessed *freehold* premises in *Birmingham*. He could not sue for arrears of rent, because he was *out* of the bounds, but he might constitute a Steward, and that Steward could sue in his own name"—*do.* p. 28.

"A baker who resided in the lordship of Duddeston, a few doors *beyond* the precincts of the Court, brought 6 Causes, which were all dismissed. The Court advised him to *rent* an Apartment in *Birmingham*, if he wished to shun ruin; this would give him a right to recover his property; for though he *sought a livelihood* according to the words of the Act, yet they did not think he came within its meaning" —*do.* p. 29.

([25]) The Charter 3 and 4 Wm. 4. c. 85, s. 82—residence in certain parts only, without leave.

person shall be the Owner of any House, Shop, Warehouse, or other place, though he shall rent the said House, &c. to another person, the Owner shall, so long as he derives a rent therefrom, or be the Owner thereof, be amenable to the Court. (26)

Contractors.

15.—*Contractors* — That all Contractors for the supply of Gram, or Grain for the Hon'ble Company's Cattle or Troops; or for the supply of Provisions, or any other Articles for the Troops, shall, though not residing within the limits of any Mily. Cantonment, &c. be amenable to the Mily. Courts of Requests. (27)

No Criminal Jurisdiction.

16.—*No Criminal Jurisdiction*—"That the Court, having no Criminal Jurisdiction, be not authorized to investigate Cases of Maltreatment, excepting when connected with a Servant's desertion, and then only, when he sues for his Wages." (28)

Promissory Notes.

17. —*Promissory Notes, &c.* — That Promissory Notes for the payment of Money be not required to be

(26) Upon the principle that "no man ought to sue, but he who is liable to be sued." *Hutton*, p. 180, who also says regarding a lady who resided *in* Birmingham, but whose tenants were *without* it. "You are an inhabitant already as you rent a seat in a place of Worship which, in spite of all the Sophistry of Westminster-Hall gives you the right you want. If the Commissioner wishes to adhere to the Act, he must admit the temporary Suitor"—*do.* p. 180.

Cases occurred at Kurnal in which a Shroff who resided in the town of Kurnal constantly sued those residing in Cantonments. This Man possessed Houses, Shops, &c. from which he drew a *rent*. Regn. XX. A. D. 1810—Sect. XXVI., forbade Comg. Officers to dispossess the proprietors of Lands or Houses within the limits of a Mily. Cantonment, who refused to be registered. The Order was framed just after the Regns. relative to the Mily. Police of Cantonments being vested in Comg. Officers of Stations, &c.—and was equitable. But by Section VIII. no person is to be registered against his *Consent*—while Sect. XXIV. renders persons *not registered* amenable to the Civil Courts! here equity ceased, the right of Registry gave a right of Residence, and prevented others from having Shops; but if a Man resides in any Bazar, or holds property, he should be amenable. It was equitable not to *dispossess* rightful owners; but as the Law of England makes a Man amenable by virtue of the protection of its Law; he should, upon the same principle, be amenable to the Mily. Courts of Requests where he himself, can sue in those Courts, and has the protection of the Police of the Bazar, wherein his property is situated.

(27) Such Contractors have Agents, who personally carry on the business of the Contractor, and have shops, &c. in the Cantonment; and such is "carrying on a Trade" within the limits of the Cantonment.

(28) Circular, No. 528, A. G. O. 1st May, 1829.

on Stamp Paper, [29] nor any other Instrument produced before the Court; provided the Court be satisfied as to the Justice of the Demand, according to Equity and Good Conscience.

Interest on Bills, &c.

18.—*Interest on Bills, &c.*—" Not allowed by Law, (unless at the time of selling it is agreed to, or at a future period promised, if time for payment is granted) supposing that the seller has the option of suing (Deft. being within Jurisdiction) when the Bill becomes due, and not paid when demanded. If a Debtor has removed to a place where his Creditor is precluded from suing him, and he has demanded payment when such Debtor returns within Jurisdiction, and is sued; the Creditor is considered entitled to a *fair rate* of interest, after the expiration of the Customary Credit time, [30] i. e. for the period of such absence, or the time between the expiration of such Credit and his return from the place he went to, to escape payment. *Courts of Requests being greatly guided by circumstances of Equity, as well as Law.*"

[29] Regn. X. A. D. 1829—(*Stamp Act*)—Schedule (A)—4—requires a Stamp on Bills of Exchange, Promissory-Notes, Hoondees, Teeps, Burats, and other Orders or Obligations for the payment of Money—if payable within the Provinces subordinate to this (Bengal) Presidency. But, I think such should not obtain in a Court of Equity; as the debt is to be decided according to Equity and good Conscience.

[30] Usually 3 Months in Calcutta. Though they often give longer Credit—even 12 Months—*Hutton*, p. 237—says " 6 Months Credit is a rule of trade." The Calcutta Tradesmen' insert in their printed Paper of Terms " 3 *Months Credit allowed; after which* 10 *P. C. is charged*"—but this Notice does not, legally, bind the buyer.

In a Case where Pltff. sued for a debt and Deft. acknowledged the Debt, but refused to pay Interest—The Commissioner decreed the Original Debt *without Interest*, and said that " unless there existed a previous understanding that after the expiration of a certain period interest would be charged on the bills, the Tradesmen have no right to charge interest." *Calcutta Ct. Requests*, 28th Nov. 1832.

In the *Insolvent Court*, (Calcutta) 25th Jany. 1832. The Commissioner remarked that "*Tailors' Bills*, and several others in the Schedule, were not chargeable with interest."

Book Debts do not, of course, carry interest: but even of them, it may be payable in consequence of the usage of particular branches of Trade; or in cases of long delay under vexatious and oppressive circumstances, if a Jury in their discretion shall think fit to allow it. (*Eddowes* v. *Hopkins, Dougl.* 361.)

The usage of *particular* branches of Trade does not apply to *Shop* Bills—such as *Tailors'*—*Jewellers*, *&c.*—who will give 10 P. C. for ready Money; a proof that (as is well known) if paid at the end of

19.—*Contracts and Agreements*—Not the Practice, in the Calcutta Court, to require them on Stamp Paper. It is proper to specify the exact Work or thing to be done—the price—the time in which to be executed—and the time in which payment is to be made—or if part to be paid by Instalments before the execution of the Work, the Amt. to be stated—or, if a sum of Money in Advance be paid, to state the Amt. paid. Also the quality of the Materials to be distinctly stated. A Clause may be added as a Penalty in Case of non-performance of the Agreement as to time, (31) or as to the quality of the Work. And if there be no such Clause, a Court of Request will decree certain deductions from the Amt. of the sum agreed upon, or unpaid, if the Case equitably merits such consideration. (32)

Contracts and Agreements.

20.—i. *Landlord and Tenant*—Whenever a person agrees to take a House, or Bungalow, &c. on a Lease, the terms should be specified most clearly in writing. The Time from which and to which the Lease is to run. The Rent to be paid in Company's Rupees, and to what Amt. monthly, &c. Also if any "notice to quit" be agreed on it should be stated. (33) It should

Landlord and Tenant.

12 Months they are not losers—hence, I would never allow interest till after the lapse of 12 Months.

The Holder of a *Bill of Exchange*, or of a *Promissory Note*, is entitled to recover the Money payable upon it with interest (*Bailey on Bills*, 90) In some cases from the date of the Bill or Note; but in general from the time at which it ought to have been regularly paid, together with all incidental expenses occasioned by non-acceptance or non-payment (*Bailey*, 91.) "And in regard to all other debts of this species, it is the constant practice, either on the contract, or in damages, to give interest for the detention." (1 *Ves. Jun.* 63.)

But "where there was no proof of agreement for interest on a Note payable on demand, held that the Pltff. was only entitled to interest from the day of issuing the writ of Summons." (2 *Bing. N. S* (*C. P.*) 167.) Jeremy's Digest. (1836).

(31) It was found necessary in Calcutta, about 20 years ago, to compel persons who had agreed to supply materials, to enter into an engagement as to time, and to pay a certain sum if they failed—as some Builders, &c. were often prevented from fulfilling their engagements.

(32) These Agreements should be in duplicate, signed by both parties—and each should hold one of the Papers.

(33) In the Case of *Wm. Hopper* v. *Clements Brown*, where the rent of a House, at Dum-Dum, was paid Monthly. The Court decided that "the house having been taken on the *first* day of the Month, and the payments being due on *that* day, the "notice to quit" ought to have been for one Month *after that* period." Calcutta

be stated whether the Landlord or Tenant shall keep the House in repairs. (34) It is better to covenant that the Lessor shall keep the House in repair, and to state to what extent—i. e. to essential repairs and to keeping the House "*Wind and Water tight*," and as to white-washing the Walls inside and outside—and whether the Garden shall be kept up by the Lessor or Lessee. "If the *Lessor* covenants to repair a House, but does not, the *Lessee* may do it, and withhold as much rent as will repay him." (35)

Repairs.

ii.—*Repairs*—It is usual for the Tenant to replace any panes of glass of Windows broken by himself, Servants, &c. (36)—though there be no specific agreement; or to make good any damage or injury to the doors, or fixtures; but, such should be inserted in the written Agreement (37) in such usual terms—"And it is also agreed, between —— and —— that when —— shall leave the premises, he shall leave the glass Windows, and other things belonging to the premises, in as good condition as they now are (reasonable wear only excepted)." (38)

Destruction by Fire.

iii.—*Destruction by Fire, &c.*—Unless agreed upon, if the *Lessee*, or his Servants, burn down the house by

Sup. Court. 30th Jany. 1833. "Each party is at liberty to give a ——————'s warning for the quitting possession of the said premises." *Williams's* L. and T. p. 13.

(34) "When a Tenant covenants to keep a house in repair, he is not answerable for the natural and evitable decay of the premises; but is bound to keep it only wind and water tight, so that it does not decay for want of cover. And a Tenant from year to year is only bound to fair and tenantable repairs, so as to prevent waste or decay of the premises; not to substantial and lasting repairs; such as new roofing, &c. (1 *Term. Rep.* 590.)

"A Tenant is bound to keep in repair erections made by himself during the continuance of his lease." (*Esp. Rep* 277.)

(35) 1 Leon Rep. 237. Co. Lit. 54. In a Case before the Calcutta Ct. Requests, 15th June, 1832. The Commissioner said that "as Pltff. had lived in the house, and chose to put up with the inconvenience, he must pay the rent. He had not been forced to stay in the house, and, when he found that his landlord did not fulfil his promise, he should have left it. *If he had proved the house untenantable, he might have recovered his rent, but he had failed to do so:* and the only thing he could recover, now, would be the Amt. that he could prove he had *expended in the necessary repairs of the house.*"

(36) "The repair of the glass is as much a debt as the rent." (*Hutton*, p. 84.)

(37) To save trouble to themselves, as well as to others.

(38) Williams's Landlord and Tenant, p. 13.

accident, he (the Lessee) is not legally compelled to repair or make good the loss or damage. All Agreements should have this saving Clause—"That the Lessee shall not be answerable if the House, &c. shall be burnt down by fire or lightning; blown down by tempest; or destroyed by any other accident; or by any Enemies. (39) Where the Rent is high, so as to yield not only the legal interest, but a fair profit, the Lessee should not be compelled to repair—where the Accident arises from the negligence of the owner—as where a Chimney is covered over by a covering of grass, or a beam runs across the flue—and the owner does not give notice; if the House, &c. be burnt down, this is the negligence of the owner. (40)

(39) It seems that, by *Law*, if a tenant covenants to repair during the term of the Lease, if the premises are burnt down as above stated —" he will be bound (although not rebuilt by the Landlord) to pay rent during the term—and to rebuild them at the end of the lease (6 *Term. Rep.* 650!)

But if the Covenant "*casualties from fire, &c.* be inserted in the lease, the tenant will not be subject to rebuild the consumed premises, and perhaps a Court of Equity would *(and should)* compel the landlord to rebuild them *(6 Term. Rep.* 488*)* And if the landlord commences an Action for the rent, an injunction will be granted to stay it till the premises are rebuilt. *(Ambl. Rep.* 626.*)*

(40) A Case occurred at Muttra, in 1828 or 1829, of an Officer who rented a bungalow from another Officer. The bungalow was burnt by fire and he refused to pay—a Committee was ordered—and they decided "upon the feelings of gentlemen." The opinion was, that he "should pay the damages; or purchase the bungalow."

Now, it is well known that, in England, houses are insured, and that, if the house be burnt by accident, the Insurance is paid—for the Insurance is "against accidents"—not if burnt during a riot (when the hundred, &c. pay)—and if even by design if committed by the Lessee, or his Servant, the law must take its course—the *Lessee* is not the person to look to.

"It is a contract by which the Insurer undertakes, in consideration of the premium, to indemnify the Insured against *all* losses, which he may sustain in his house, or goods, by means of *fire*, within the time limited in the Policy." *(Tomline's Law Dicty.—little—Insurance against Fire.*

"The same principles as to *fraud*, and the *return of premium*, apply to Cases in Insurance against fire as to all other Contracts of Insurance."—*(Do.)*

Hence, as the object of Insurance is simply to indemnify for *actual* Loss—if a Man insures for 5,000£, and the property be proved to be worth only 1,000£, he cannot recover beyond the *ad valorem* amount.

When the Fire takes place from *Accident*, the Lessee is not, legally, nor equitably bound to repair the loss or damage. Where, as in the Case of thatched Bungalows, the Lessor or Landlord charges 20 to 25 P. C. of the Value of the Bungalow as rent, he gets good interest, a

Lease. iv.—If a man takes a House, &c. on lease, and does not occupy it, he must pay the Rent, as the owner is deprived of the use of it ([41])—but you may sub-let the House, &c. to another person.

Hire of Boats. 21.—*Hire of Boats, &c.*—Where a man hires a boat, and the dandies run away, a Court of Requests will make a deduction, provided their desertion is not owing to the misconduct of the person who hires. ([42]) In all Agreements in the hire of boats, there should be stated the place from which, and to which the boat is hired—the number of oars and dandies, the price of hire to be paid, and if any advance be made, a receipt should be taken. If the rate of hire be unknown; then insert that payment shall be made, according to the customary rates, and the measurement or tonage of the boat (if a baggage, &c. boat.)

Purchase of House. 22.—i. *The Purchase of a House, &c.*—Should be in writing—Every man who has a House, &c. in any Mily. Cantonment should be obliged to register the same as now done at some Stations, in a Book kept by the Station, &c. Staff Officer, ([43]) so that there could be no doubt as to the owner-ship. The Buyer should

profit, and enough to cover *all* risks. Where the fire takes place from the *negligence* of the Lessor or Landlord in not apprising the Lessee of any circumstance likely to cause the accident, (such as that the chimney is covered, or a beam runs across the flue, &c.) he alone is to blame. If the negligence is on the part of the Lessee, he should equitably repair the loss or damage; unless the house, &c. is insured, in which case the Lessor looks to the Insurance Office. I would say that the principle as to liability on account of negligence, rests on the same grounds as in the case of accidents by the owner of a Carriage, or his Servant, by furious driving, or driving unbroken horses, or driving against another Carriage when the driver is drunk —or does not in a dark night, use lights to his Carriage—as in these cases the injured party can recover; and actions have been sustained against the proprietor of a Stage Coach where the driver was drunk, and upset the Carriage—to recover the expense of Medl. treatment, &c.

([41]) Hutton p. 127.

([42]) Calcutta Court 17th Dec. 1832.

([43]) G. O. C. C. 16th Sept. 1833—" Of Houses, Bungalows, Gardens, within the Limits of the Cantonments of *Dum-Dum*, *Barrackpore*, *Dinapoor*, *Benares*, *Cawnpoor*, *Agra*, *Meerut*, and *Kurnal*; of Sale or Transfer; present Proprietors to send a Memorandum, stating when purchased or became Proprietors—from whom obtained, and size of Compound. Sales or Transfers *reported* to, and Register kept in the office of the *principal Staff Officer*."

The order is good—but it should be extended to *all* Stations—to be of general benefit.

ascertain that there is no Mortgage on the Estate. (44) The Estate should be a Sale free from all incumbrances; or if not it is of less value. If the House, &c. is to be sold with fixtures, they should be described. Whether the Garden bullocks, &c.—the produce of the grounds, &c. form or not part of the purchase.

ii.—If the owner makes a false Statement as to the Sale of the Estate, by deception as to there being no Mortgage, while in point of fact a Mortgage shall be proved to exist—then the Seller shall not recover, and the Sale shall be void. (45) And the Sale shall not be binding on the purchaser, if the description given shall materially differ from the actual state of the Estate. Mortgage.

iii.—That the Amount of Money for the purchase of any Estate to be recovered in a Mily. Court of Requests may extend to any Amt. not exceeding 5,000 Rupees (46)—Provided that where the Amt. shall exceed 1,000 Rs., the President shall, in all practicable Cases, be a Field Officer, and that the Proceedings shall be conducted by the J. A. or Officer appointed to officiate as such. (47) Value.

23.—*As to Property in general—Horses—Tents, &c.*—That all Officers, or other persons being possessed of Houses, or other property situate in any Military Cantonment, may sue to recover the Amt. of any Money due on account of any Sale of such property, *provided* that such property shall not exceed 5,000 Rs., and *provided* that the purchaser is amenable to the juris- Horses, Tents, &c.

(44) While the Mortgage lasts there can be no right of Sale, except subject to the payment of the Mortgage—If there is a House worth 4,000 Rs. and a Mortgage of 2,000 Rs. on it—the Owner might, with the consent of the Mortgagee, sell the House—the Security remaining unaffected by the Sale.

(45) It is a rule of Law that no one shall benefit by his own wrong—Equity here should decide the Case.

(46) House sometimes cost more, and I think the sum might be raised higher—for why should not an Officer be able to recover in the Mily. Court of Requests, a debt due to him by another Officer; instead of going into a Civil Court!

(47) As provided for in the Case of the Native Court of Requests out of the Company's Provinces—G. O. V. P. C. No. 175 of 1832, 29th October—the extent of jurisdiction of Native Courts of Requests has in view the recovery of money to any amount from Native Contractors and other debtors to the Company, who reside out of the Provinces where there are Civil Courts.

diction of the Mily. Court of Requests—whether such property shall consist of Houses, Horses, Tents, &c. ([48])

Money Lent, &c.

24.—*Money Lent or Borrowed*—The highest legal interest in India, where Money is lent by an European to an European or Native, or by a Native to an European, is 12 P. C. in the Company's Provinces, and no more can be recovered ([49])—with regard to Natives lending Money to Natives they are subject to their own Law. ([50]) *Provided,* that no action for the

([48]) I think an Officer should be able to recover even to any extent in a Mily. Court of Requests, without being obliged to sue in a Civil Court—and have a distance to go for Justice, accompanied with expenses and delay, &c. I think the Act (by G. G. of India in Council) XI. of 1836 should be reserved for Indigo Planters, and others holding Lands, &c. out of Mily. Cantonments—*See Note 80 p.* 33 as to the necessity.

Proposed.

I would insert this Clause—" Provided that no Sale or Transfer by any Civil or Mily. Servant of Govt., of Grounds, Houses, Boats, Equipages, Horses, Elephants, Plate, Furniture, and generally any description of property, exceeding the value of 5,000 Rs., if sold to foreign Princes, Chiefs, or Natives of Rank or Opulence, shall be valid unless the Sanction of Govt. shall have been obtained, (G. O. G. G. in C. 7th Nov. 1821) nor sueable in a Mily. Court of Requests unless such sanction for the Sale or transfer be produced before the Court. I think if a Native of Rank is allowed to reside in a Mily. Cantonment, &c. he should be subject to its Regns.—and, of course, the *Civil* Servants of Govt. *See Note* 79, *p*. 33.

([49]) 13 Geo. 3, Cap. 63, s. 30—but in the Case of W. Palmer and Co., formerly of Hydrabad—the Marquess of Hastings moved the House of Lords to ask the opinion of the 12 Judges whether the above Act and Section limits the rate of interest to 12 P. C. per 100£—" such Loans being made or advanced *within* the Dominions of a " Native *Independent* Sovereign by British subjects domiciliated " and residing within such Dominions"—answered in the Negative—opinion of the Judges in the House of Lords, 27th June, 1825—pubd. by Command of G. G. in Council.

The 30th Section recites " no subject of His Majesty, his heirs and successors, in the East Indies—shall upon any contract, for the loan of any Monies, Wares, Merchandise, or other commodities whatsoever, take directly or indirectly above the value of 12£ per 100£—the penalty is the forfeiture of treble the Amount.

The Act should have stated instead of " in the *East Indies*"—in the " possessions of the East India Company"—see *Auber's* Analysis, p. 434, &c. I apprehend that all places out of the Compy.'s Possessions must be governed by the same rule; and that places under the Compy.'s protection, being a *political* protection, and where the Jurisdiction of the Supreme Court does not extend, stand on the same ground.

([50]) 21 *Geo.* 3, c. 70, *s*. 17, (1781) " and all matters of Contract and Dealing between party and party, shall be determined, in the Case of Mahomedans, by the laws and usages of Mahomedans ; and in the Case of Gentûs, by the laws and usages of Gentûs : and where only one of the parties shall be a Mahomedan or Gentû, by the laws and usages of the Deft." (in all actions in the Supreme Court, against the inhabitants of Calcutta)—*Auber's Analysis*, *p*. 250.

recovery of Money lent to N. C. O. or Soldiers shall be brought before a Mily. Court of Requests. ([51])

25.—*Transfer of Debt*—The Transfer of a Debt can be made with the Consent of the Debtor, Creditor, and the person to whom the transfer is made ([52])—but such transfer should be in writing; otherwise the parties must appear to prove their Consent. Transfer of Debt.

26.—*Property above limited Amt.*—Though property be sold for more than 400 Rupees, ([53]) if the purchaser shall give several Promissory Notes not exceeding 400 Rs. each, the Seller may recover upon any number; provided they are payable at different dates. ([54]) Above Limit.

27.—i. *Husband and Wife*—" Must sue the husband (unless wife is living in adultery with another, and not Husband and Wife.

([51]) G. O. C. C. 1st Feb. 1821—" Soldiers prohibited from lending Money on Interest to their Comrades, but at liberty to dispose of it out of their Corps." The object was to prevent litigation in Corps.

([52]) Hutton, p. 182.

([53]) The present limit " not the practice to *divide* a debt unless made in writing"—i. e. to pay by Instalments, (such as Promissory Notes, &c. are) Hutton, p. 346.

([54]) The following are the Forms of Bills of Exchange:

20£ London, 1st Jany. 1836.

1.—On demand (or Two Months, &c. after date,) I promise to pay A. B., or bearer, on demand Twenty Pounds, for value received.

C. D.

20£ Calcutta, 1st Decr. 1836.

2.—Two Months (&c.) after date, we and each of us promise to pay to Mr. C. B. or order, Twenty Pounds, value received.

A. B.
C. D.

100£ London, 1st Jany. 1836.

1.—One Month (&c.) after date, please pay to A. B. or order (or to me or my order) the sum of One Hundred Pounds, and place the same to the account of.

C. D.

To Mr. E. F.

(Place of abode and business.)

Acc. E. F.

2.—London, 1st Jany. 1836. Exchange of 50£ Sterling.

At sight (or at sight of this my only bill of exchange) pay to Mr A. B. or order, Fifty Pounds Sterling, value received of him, and place the same to account, as per advice (or without further advice) from.

V. S.

merely separated.) The wife is not, in Law, answerable for her husband's debts, unless she had agreed to take them on herself." ([55]) "Where Deft. had signed a Bond in her husband's life time, he being too ill to sign, decreed that as Deft. by signing the Bond had prevented Pltff. from suing her husband during his life time, she was answerable." ([56]) "Where the Deft.'s wife usually gave orders for goods, her acknowledgment of a debt being due within six years, was held to be evidence against her husband." ([57]) "Where a husband and wife reside together, and the husband neglects to provide his wife with such matters as befit her condition of life, he will be liable for such necessaries, though taken up by the wife without his authority; but if the husband has taken care to provide Tradesmen of his own to supply all necessary Articles for his wife, he would, in that Case, not be liable for any which she might contract in such circumstances." ([58])

To Mr. C. D, &c.

3.—London, 1st Jany. 1836. Exchange for 50£ Sterling.

At fifteen days after date (or, at One, Two, &c. Months) pay this my first bill of exchange, second and third of the same tenor and date not paid) to Messrs. A. B. and Co. or order, Fifty Pounds Sterling, value received of them, and place the same to account, as per advice from.

C. D.

To. Mr. E. F.

Banker, &c.

N. B. The two other Bills of the set are varied thus "first and third," and "first and second not paid." If in Rupees, "Company's Rupees." 3 days Grace are allowed to Promissory Notes: but not to bills payable at sight. If the last of the 3 days falls on a *Sunday*, the bill is payable on *Saturday*. *Tomline's* Law Dicty. Title *Bills*. &c.

(55) West v. Wade, K. B. C. S. Abbott, 17th Oct. 1822.

(56) Calcutta Ct. Req 18th May, 1832.

(57) Starkie, vol. 2, p. 57.

(58) By *Ld. Tenterden*. It was an Action against *Mr. Espinasse* for Jewellery supplied to his Wife—given in favor of Pltff.—Deft. moved the Court *in Banco*, when the question was argued at great length—and the Conditional rule to set the verdict aside, and enter a non-suit, was made absolute. Judgment of Ct. K. B.—but in another Case some time afterwards—*Leaton* v. *Espinasse*. Amt. £28-5-9—for goods delivered to Deft.'s Wife by Pltff. Deft. denied his liability for any Amt. beyond 10£ which sum he had paid into Court. The Jury gave a Verdict in favor of Pltff.—giving Deft. Credit for the 10£. The learned Judge Best (now Ld. Wynford) declared that but for the *tender* of the 10£ and the impossibility of ascertaining to what items in the

ii.—Where the wife is separated from her husband by the consent of both parties, and the husband makes a suitable allowance, a Court of Request will not order the husband to pay her debts so long as he fulfils his agreement. (59) If a man passes off a woman as his wife he is answerable for her debts. (60) "All debts contracted by a woman before marriage, must be sued for in the name of both." (61) Separated.

28.—*Minors*—It is usual in Courts of Requests to sue the parents or guardians. (1) But "except in particular Cases, the Bench (2) seldom plead a minority in favor of the Deft. The Court are not bound to take notice of his non-age, except he pleads it; nor regard the plea, except he proves it. If a person is sued for necessaries, such as food, clothes, physic, shaving, surgery, lodging, &c., the Court over-rules his plea of non-age, but treat him with great moderation, by charging the payments easy." The Case seems to be governed by this principle. "If a daughter resides with her parents, is under their care, as part of the family, and they receive the profits of her labor, they must be responsible for the debts contracted in her support. But if the girl lives in a state of *separation*, works upon her *own account*, receives and uses her *own money*, she alone is answerable for payment, though under age, provided the debt was for *necessaries*." (3) Minors.

account it was intended to apply, the Deft. would have had an extremely clear Case in *law* and *fact*." (Ct. C. P. 21st Feb. 1828.) None but a Jury of Tradesmen would have given a Verdict for Pltff. —and no Mily. Ct. of Requests—for according to the text, the *tender* alone affected the Case.

(59) Hutton, p. 90, 91. (60) Ditto, p. 113. (61) Ditto, 384.

(1) Calcutta Ct. Req. 19th Dec. 1832.

(2) Hutton, p. 51, as to the "Birmingham Court."

(3) Hutton, p. 251—those of 12 to 14 years of age—He says "If we attend strictly to *law* perhaps an infant, who proves himself under age, can't be sued, p. 52—but if Equity was not considered "it would be putting a wicked argument into his mouth, against paying a just debt," p. 51.

It is but just and equitable to oblige those under age, who can earn their support, to pay for it, to relieve their parents; where the latter do not receive the profits—or, where they live separate from their parents.

Master and Servant.

29.—*Master and Servant*—A Master is not bound to pay debts contracted by his Servant for Bazar or House Expenses, unless the Master desires the Shopkeeper or Tradesman to trust the Servant or give him whatever he asks for in his (Master's) name. Should the Master say to Pltff., "If you choose to trust the Deft., I will endeavor to stop the Money out of his Wages and pay you," that is no obligation. If he should say, "Trust the Deft. with what he chooses; do not charge it to him, but to me; I will pay you;" this is the strongest assurance he can give; it binds the Master, and sets free the man. If the Master says, "Trust him, he will pay you;" it is not binding. If he says, "Trust him, you shall be paid;" or "I will see you paid," amounts to the same thing. (4) If a Master makes advances of Cash to his Servant to supply his Table, &c. and does not authorize the Shopkeeper to trust his Servant, he cannot be held responsible. (5)

Carrier.

30.—*Carrier*—If a man employs a Carrier to convey goods to any Place or Shopkeeper, and not to deliver them without payment, and payment be refused; the Carrier may charge double carriage for bringing back the goods. If the Carrier leaves the goods without payment, the sender of the goods has his action against the Carrier, and the Carrier against the Shopkeeper, &c. (6)

Paupers.

31.—*Paupers*—In the Case of Paupers unable, from age or sickness, to work, the Court will try to persuade Pltff. to release; or make the payments as low as possible, and protract the first payment for some months; instead of sending him to Prison. (7)

Bankrupt and Insolvent.

32.—*Bankrupt and Insolvent*—"The moment a Statute works it divides a man from his substance; he can call nothing his own; his estate contracts no debts; *the interest of all the Money he has hired*

(4) Hutton, p. 174-5.

(5) A master should never suffer his servant to have general Credit in his (Master's) name—for if withdrawn, it may be regranted, and there remains the difficulty of proving when it was withdrawn.

(6) Hutton, p. 102.

(7) Ditto, p. 107, 486.

ceases to grow, (8) consequently he is only chargeable for any debt created before the issuing of the Commission." (9) But if he acquire property before he obtains his Certificate, it will be answerable for the debt with his other debts; as the Orders of the Court of Request continue, except cut off by the Certificate; for till this is obtained the Bankrupt is chargeable with all his debts." (10) Also, if the Bankrupt promises to pay "when he is able," he is bound by his promise. (11) There can be no Claim in a Court of Request against an *Insolvent* till discharged by the Insolvent Court. The Creditor should cause his Claim to be inserted in the Schedule in the latter Court. (12)

33.—*Gambling Debts—Prostitutes*—If the Debt is arising from Gambling, it cannot be recovered in a Court of Requests (13)—nor can the Wages of Prostitution be recovered. Gambling Debts—Prostitutes.

34.—*Apprentice*—If the Master stipulates to find him in the necessaries of life, he is bound to do so, and if he fails to do so, and the Apprentice procures them elsewhere the Master must pay; provided the Apprentice keeps the terms of his Indenture. If he be an *Out-Apprentice*, and is living with his father, or friends, Wages being paid for his Work, then the Master cannot be sued for any debt, but only for Wages due. (14) Apprentices.

35.—*Partners*—That in the Case of Partnership where the Action is against the firm, it may be against ———— and others, and the Pltff. may be called on to state the other names, and if the Deft. does not demur, they shall be taken to be Partners—nor shall the Pltff. suffer by selecting one name. If the debt be not Partners.

(8) Upon what principle then can the Assignees in Calcutta charge 10 P. C.• In the Calcutta Insolvent Court in the Case of late Lt. Cullen, Arty., in June 1833, the Chief Commissioner only allowed 5 P. C. Interest; unless where more had been specially promised by Petitioner—the text uses the words "*ceases to grow*" which are stronger still—and if the *Insolvent* does not pay interest, why should the *Debtors* to the Estate? should, not the money in both Cases "*cease to grow*"—and not in one only?

(9) Hutton, p. 305.

(10) Ditto, 307.

(11) Ditto, 311.

(12) Court Request, Calcutta, 25th March, 1833.

(13) Hutton, p. 55.

(14) Ditto, p. 158.

discharged, every Partner is responsible till it is. If he sues against one and recovers, the rest go free. If he sues A. gains a Verdict, and recovers part, and A. dies, he may sue (15) the other Partner, B., for the part unpaid, but not more; (16) *but if B. be Insolvent or dead, he may sue the Exors. of A.*, if A. has Property left. (17)

Pledges and Security.

36.—*Pledges and Security*—If A. sues B., and it shall appear that—A. holds a Security or Pledge, which B. has deposited in his hands, the Court will not make an Order against B. till the Pledge, &c. is returned. But if the debt exceeds the power of the Court, they will inquire into the Value of the Pledge, &c., deduct that Value from the debt, and give A. the remainder. (18)

Death of Pltff. &c.

37.—*Death of Pltff. or Deft.*—If a *Pltff.* dies before the debt is paid, the Deft. must pay it according to the Order of the Court, and it will be paid to the lawful Successor of the deceased. But if the Debtor neglects payment, the Successor may sue him in his own name, and will recover. (19) If a Deft. dies, while any of the payments remain due, his lawful Heir or Successor is liable for the balance due, (20) if he inherits or succeeds to any property from Deft.

Widows.

38.—*Widows*—"The Court has a right to oblige a Widow to refund the property of the deceased (husband), for the use of his Creditors." (21) But where Money is settled on the wife, such cannot be touched. "Whatever property a man dies possessed of, cannot belong to his Heirs till his debts are discharged. The Widow is not bound to pay farther than the effects he left will bear. If she afterwards acquire property it is her own" (22)—or if Money be left to her.

Property Lost:

39.—*Notes, &c. Lost*—Where Deft. obtained a Banker's Note, for a consideration, which had been, before it came in to Deft.'s hands, in the lawful posses-

(15) Hutton says "he may sue the Exors., if A. has left effects," p. 34. I think only if the other Partner, B. be dead.

(16) Hutton, p. 34. (17) See Note 15.

(18) Hutton, p. 34. (19) Ditto, p. 55. (20) P. 56.

(21) Hutton, p. 235. (22) Ditto, p. 395.

sion of Pltff. from whom it was stolen, decided that the Pltff. should recover. ([23])

40.—*Misnomer*.—" If the Deft. pleads a Misnomer, the Court will rectify the mistake. If the error is unknown to the Court, their determination will hold good, provided the right person was served. He ought to have appeared, and pleaded the Misnomer; no after plea can avail." ([24]) If the error be discovered during the trial, notwithstanding the absence of the Deft., the Court should have it rectified before they proceed. ([25]) But if the Deft. will not declare his real name, the Court will decree against him. ([26]) Misnomer.

41.—*Witnesses, &c. free from Arrest*—Witnesses duly summoned before a Mily. Court of Requests shall be free from Arrest while going to and coming from the Court; in the same manner as Witnesses before Genl., &c. Courts-Martial. The parties also shall, in like manner, be free from Arrest. Free from Arrest.

42.—*Deft. not appearing*—" If the Deft. does not appear, though serving the Summons is proved, the Cause may be kept open for another hearing. ([27]) If sick, he should send a Medical Certificate—if he should be prevented from any other Cause, he should state it, and ask to postpone the Cause. ([28]) Deft. not appearing.

43.—*Postponement of Cases*—If either party chooses to postpone the Case to a future day, for Evidence, it is allowed ([29])—or in Cases where the parties may be absent. Postponed.

44.—*Warrantry of Horses*—If the Deft. object to pay for a Horse which he purchased from Pltff., on account of the Horse having been unsound when sold, the Certificate of Warrantry should be produced, and a Veterinary Surgeon, or other competent Judges, should be examined. ([30]) Warrantry.

([23]) Before Ld. Mansfield and special Jury, 1765, Annl. Regn. vol. 7, p. 111.

([24]) Hutton, p. 37. ([25]) Ditto, p. 38. ([26]) Ditto, p. 271.

([27]) Hutton, p. 30.

([28]) Hutton says, in this case the Pltff. pays for the Summons, and the Court send an order to Deft. specifying the sum he is charged with.

([29]) Hutton, p. 30.

([30]) Lord Mansfield declared that " if at any time, any horse dealer should take the price of a sound horse for an unsound one, the warranting or not warranting, should make no difference in the decision." Annl. Regn. (1764) vol. 7, p. 93—See Cases in my 3d Work—(1834) p. 204—8.

Sued by mistake.

45.—*Two jointly sued by mistake.*—" If two persons are jointly sued, they are considered as one person with regard to the debt ;" but both must appear unless they are Partners, or the absent, gives his consent to the act of the Deft. present—" If two persons are sued, and the debt shall be found to belong only to one" ( )—the name of the *wrong* Deft. may be struck out, and " the *right* Deft. may then be sued."

Member,

46.—*Claim against a Member*—If there be a Suit or Claim against the President or any Member, such Officer cannot give an Opinion in his own C. —He must retire—but may afterwards resume his S

Sunday.

47.—*Payment on a Sunday*—If a Debt or ages be paid on a *Sunday* the repayment might be claimed, and be decreed in a Court of *Law*—but *Court* of *Requests* as a Court of *Conscience* would not if satisfied as to *a* payment, order a fresh payment ; as the Pltff. has no demand in Equity !

Long Arrears.

48.—*Long Arrears of Wages*—When a Servant demanded his Wages, being long in arrears, and not obtaining payment quitted his Master's Service and sued him , the Commissioner decreed the Amt. admitted by Deft., without any deduction ; on the ground of the arrears o wages due to Pltff. were unreasonably long, and therefore he committed no *laches* which rendered him liable to forfeiture in suddenly quitting his Master. (32) Servants should be paid for the month to which thei Ma er is paid—and if in arrears should be paid before other Debts. (33)

Priority.

49.—*Priority of Debts*—Servants' Wages, Bazar Expences for Grain, &c. and money due to Servants for Table Expenses, should have a priority- being the necessaries of Life.

No Agreement.

50.—*No agreement as to Price or Work done*—" If A. buys goods of B., and no price be agreed on, the jury would award the real value—If A. employs B. to transact any business or perform any work for him, with any specific agreement as to Wages, B. may

(31) Hutton, p. 31—says " the Cause must be dismissed." This because in Civil Courts they take out a fresh Summons.

(32) Calcutta Court, March, 1830.

(33) The Wages of Servants are among the first debts to be paid, *Black* ii p. 511.

recover his *quantum merit*;" (34) or what such persons usually receive as hire, &c. And according to the *conduct* of Deft., may decree the highest rate known: but Pltff. cannot, in Equity, recover to the extent of an *exorbitant* demand.

51.—*No Dustooree or Custom*—If an article be purchased without any Agreement, Deft. cannot legally or equitably make a deduction on account of "*Dustooree*" or "Custom." (35) No Dustooree.

52.—*Dismissions of Cases.*—Dismissions arise from various causes, such as false claims; a cause depending in another Court; or if it has been determined or finally dismissed in the Court of Requests (36)—As to dismission, the word "*dismissed*" written in the Column of Decrees is no bar against a future suit" (37) as Pltff. may show fresh grounds for his Suit unknown in the first instance; and which give him clear proof [illegible] an equitable claim to recover. Dismissions.

53.—*Non-suit*—If the Pltff. should not appear to prosecute [illegible] claim, a Non-suit ensues. "But he may com[illegible] any new action of the same or like nature" ([illegible]) [illegible]d in *Equity*, as in Law. Non-Suits.

54.—[illegible] *with and without Receipt*—Money should [illegible] into Court, or to the Pltff., or person authori[illegible] receive the same, taking a Receipt: payme[illegible] out a Receipt is not a payment in Law. "Unless there be a Receipt for Money paid into Court, it is not deemed a payment into Court." (39) "Where Pltff. granted a Release to Deft. on condition of the payment of 100 Rs., and signed a Receipt in full in such terms, which Deft. took and kept, and never paid the 100 Rs., the Commissioner said the Receipt [illegible]d not stop the Case from going on; and that the decision depended on the Amt. due on the adjustment of accounts. (40) Receipt.

(34) 1 Term. Rep. 20.

(35) Calcutta Police, 15th Feb. 1831.

(36) Hutton, p. 37. (37) Ditto, p. 38.

(38) 4 Term. Rep. K. B. 436.

(39) Calcutta Ct. Req. Rule—but there are Costs on such payments.

(40) H. G. Statham v. B. McMahon and Co.—Calcutta Ct. Req.; 30th Sept. 1836.

Security. 55.—*Security*—If goods be pawned by Deft. as Security for the payment of a debt, the Pltff. having a *lien* on the goods, has a right to detain them till the debt be paid. ([41])

Dividing Debt. 56.—*Dividing Debt—2 Claims*—May divide a debt, where there are 2 separate Claims; as one for Money lent, and one for Wages. ([42])

Agreement. 57.—*Agreement not fulfilled as to time*—Where Pltff. agreed to repair a Buggy for a certain sum in a given period, and exceeded the time by 1½ Month to the loss of Deft.—the Commissioner said as no penalty was mentioned in the Agreement he could award none, but, in Equity, made a deduction. ([43])

Prices. 58.—*Difference in Shop Prices*—Where Deft. objected to a Charge, as being higher than that of other shops, and Pltff. said he could quote higher Charges, and that his was his usual Charge—the Commissioner said as Deft. had not objected before he employed Pltff.—it was now too late, and decreed the Amount. ([44])

Neglects. 59.—*Neglect by Servant*—Where a Saees sued for 2 months and 12 days Wages ([45]), after a lapse of 3 years, and had been discharged for leaving a Buggy and Horse standing alone, owing to which the Horse ran off and the Buggy was damaged and the repairs cost 18 Rs., the Commissioners decided that as the repairs owing to the injury cost more than the Wages claimed, he was not entitled to any—*Dismissed.* ([46])

Hire of House. 60.—*Hire of House—No Agreement*—Where the Deft. made no Agreement as to Repairs, and rented a House having no bolts or locks on the doors—the Agreement stating no Repairs—the Commissioner decreed in favor of Pltff. ([47])

Lottery Tickets. 61.—*Lottery Tickets*—It was doubted whether Pltff. could recover the price of a Ticket sold in India,

([41]) The Commissrs. Calcutta Ct. Req. 16th Sept. 1836. Praunkisto v. R. Cauty.

([42]) Ditto.

([43]) Calcutta Ct. Req. 19th Sept. 1836.

([44]) Calcutta Ct. Req. 19th Sept. 1836.

([45]) 12 Rs. 12 As. 9 P. at 5 Rs.—I quote this to show that though in the Case of desertion, a month is the usual extent of *deduction*—supposed to be equal to a month's notice—still that in other cases greater deductions are made.

([46]) Calcutta Ct. Req. 26th Sept. 1836. ([47]) Ditto.

on account of a Government Lottery, and resold in shares on speculation, upon the principle that though the Court is one of *Equity* and not of *Law*, and whatever might be the Govt. Regn., yet nothing could set aside an Act of Parliament which declares that no gambling Debt can be recovered; and that Lotteries are Gambling Transactions. (48) The question turns upon the Construction of the Act of Parliament making Lotteries illegal: (49) which does not seem to extend to India. (50)

62.—*Arbitration*—Where the Court recommend recourse to Arbitration, and with parties' consent, the Court will not afterwards decide on the Case. Arbitration.

But where Arbitration is merely agreed upon between the parties, if either party be dissatisfied, there is, it seems, no bar to a Suit. (51)

An Award can be set aside if the Arbitrators do not comply with the terms of contract, or require the party to pay more than the original contract. (52)

The terms of Arbitration should be in writing, and signed by the Arbitrators. (53) A Court may decide a debt to be due by Deft. and recommend the Items of an Account to be settled by Arbitration: the point at issue being settled, as to the *liability* to the debt or debts.

63.—*Debtor about to leave the Country, Cantonment, &c.*—Where the Debtor, the Captain of a Ship, was about to sail from India, the Deft. was arrested by Leaving Country, &c.

(48) P. Burns v. Beerchund Uddy and others—Calcutta Ct. Req. 7th Oct. 1836.

(49) The 42 Geo. 1, c. 119, imposes heavy penalties on Lotteries not authorised by Parliament. Lotteries have since been abolished at home.

(50) Sir E. Ryan, C. J. Sup. Ct. Calcutta, in his address to the Grand Jury, 13th April, 1829, on the introduction of the Act for the better Admn. of Criml. Justice in the E. I. (9 *Geo.* 4, *c.* 74) stated that—"from a construction which former Judges of this Court have put upon the Act 13 Geo. 3, and the King's Charter, it has been considered that the Inhabitants of Calcutta are not entitled to the benefit of the Statute Law of England to a later period than the 13 Geo. 1, (1726); unless *expressly* named in Statutes passed since that time, *Mr. L. Clarke's Analysis of the* 9 *Geo.* 4, *c.* 74, p. 4.

(51) Mr. (now Lord) Brougham's Speech, 7th Feb. 1828, p. 65, (6 *Ves.* 818.)

(52) K. B. 16th Nov. 1827, in the matter of Ld. Beresford.

(53) An Arbitrator is appointed by each party, and the Arbitrators chuse an Umpire if they disagree.

a Judge's Warrant at the instance of Pltff. ([54]) In the Case of an Officer or other Mily. person about leaving a Cantonment; the Comg. Officer may detain him till the Court have decided on his Debts.

Frauds.

64.—*Fraudulent Transaction*—If Pltff. sues Deft., and the transaction is of a fraudulent nature, Deft. will not be forced to pay. And the Pltff. would be liable to be tried for the fraudulent Act.

Delivery of Goods.

65.—*Delivery of Goods*—The best and easiest proof of the delivery of Goods is sending a Receipt to be signed and returned by the Purchaser ([55])—with directions not to leave the Goods without the return of the Receipt. If Goods be detained without, and a Receipt be refused, the Seller could demand back his Property.

Contempts.

66.—*Contempts*—If any person insults a Commissioner in Court, or is guilty of gross misconduct, and insolence to the Court, the Commissioner is authorized to carry the Offenders before H. M.'s Justice of the Peace; who have power to fine or imprison, or both, on the Oath of one or more credible Witness or Witnesses. ([56]) In a *Mily.* Court of Requests, with respect to Non-Mily. persons, or those not amenable to Mily. Control, the same course should be adopted, if a Justice of the Peace be on the Spot, if not, on proof before the Comg. Officer of the Station, &c. In Case of Mily. persons, there should be a Fine by the Court, in Ordinary Cases; in Cases of an aggravated nature, the offending party should be arrested or confined by order of the Court.

Where Deft. assaulted Pltff. for bringing a Suit against him in a Court of Requests, Pltff. brought an Action at the Sessions, and Deft. was fined 20£. ([57])

A Witness refusing to take an Oath is committed. ([58])

Perjury.

67.—*Perjury of Witnesses, &c.*—In the Calcutta Court when the Parties or Witnessess perjure them-

([54]) Beauchamp v. Eales, Calcutta Ct. Req. 20th January, 1832.

([55]) Calcutta Practice.

([56]) " Instrns. of Ct. Drs. 8th January, 1753—A Fine not exceeding 2 Pagodas (7 Rs.) and Imprisonment not longer than 10 days."

([57]) John Wood v. Richd. Wood—Westminster Sessions, 19th Janv. 1828.

([58]) Calcutta Court.

selves, they are sometimes committed to the House of Correction for a month or more, according to the enormity of their Crime. (59) Mily. Courts of Requests should report such Cases to the Officer Comg. the Station—the Court has no Criminal Jurisdiction—and as to Non-Mily. persons, the procedure must be in a Civil Court.

Perjury is a false swearing as to some material fact in issue; and though a man may swear falsely as to many facts not material to the issue; such false swearing may discredit his Evidence: but is not legal, though moral, perjury.

68.—*If Pltf. owes Deft.*—The usual course in the Calcutta Courts is to "*dismiss*" the Cause, leaving the Deft. to recover any balance by a separate Action. Deft.'s Claim.

69.—*False Claims or Statements*—As Courts of Requests have not, yet, Cognizance of Actions for Damages; loss and the cost of the Suit are the only penalties. In *Mily.* Courts there is at present no punishment for false Claims. But, if a Servant either before the Court, or elsewhere, gives a false Character of his Master, as to ill-treatment of his Servants, and thereby prevents others from entering into his Service —such Servant is liable to trial and punishment. False Claims.

70.—PROPOSED PAYMENTS ON NON-SUITS—AND JUDGMENTS, &c.—I propose that there shall be the following Table of Costs, as obtains in the Calcutta Court of Requests :— Costs.

	Rs.	As.	P.
On NON-SUITS on Causes of 10 Rs. and under, per Rs.	0	3	0
Do. do. of above 10 and under 40 Rs. ..	1	8	0
Do. do. do. 40 and do. 80 ,, ..	4	0	0
Do. do. do. 80 and do. 150 ,, ..	6	0	0
Do. do. do. 150 and do. 300 ,, ..	10	0	0
Do. do. do. 300 to 400 ,, ..	12	0	0
On JUDGMENTS on Causes of 10 Rs. and under, per Rs.	0	4	0
Do. do. above 10 and under 40 Rs. ..	2	0	0
Do. do. do. 40 and do. 80 ,, ..	6	0	0
Do. do. do. 80 and do. 150 ,, ..	8	0	0
Do. do. do. 150 and do. 300 ,, ..	16	0	0
Do. do. do. 300 to 400 ,, ..	20	0	0

(59) Sir E. H. East, when C. J., was of opinion that the Court should only commit for trial.

N. B.—If the Pltff. be Non-Suited he shall pay the Cost of a "*Non-Suit*" to the extent of his Claim. If Judgment be given against a Deft. he shall pay the Costs on the "*Judgment*" to the extent of the *Sum decreed only*; and in addition to the Amt. of the Sum decreed. (60)

The Objects of the above Table, as proposed by me, are two. 1st. That it is but just that a Pltff. who brings a false Complaint, should pay for his Non-Suit. 2d. To pay the Expense of an European (a Serjt., &c.) as Clerk to the Court to keep the Register; make out Summonses, &c.; (1) and to Index the Names of all Pltffs. and Defts.—and to supply the Registers, Stationery, &c. (2)

Decrees. 71.—*Decrees* (3)—In the Calcutta Court, if the Debt be not forthwith paid the Debtor is Imprisoned. (4) In the *Mily*. Court I propose Instalments and taking Security (5) in all Cases of persons not receiving public Pay. By Section 57, 4 Geo. 4, c. 81, 2 months' Imprisonment are awarded, unless the Debt be sooner paid. Though not so expressed (6) this Imprisonment

(60) the Calcutta Court charge Commission of 5 P. C. on all Causes compromised before called on for trial—and 10 P. C. on all other Causes, exclusive of the above Charges—also for Subpœnas—Attachments, or Warrants in execution—and Postponements at the request of the party.

(1) They might be lithographed, to be in English or Persian, as required.

(2) If there were any balance left after the above payments; the same to be applied to repair, &c. the roads of Cantonments.

(3) See p. 37.

Imprisonment.	*Rs.*		*Months.*
(4) Debt not exceeding	10	Not exceeding	1
Ditto	50	Ditto	4
Ditto	200	Ditto	8
Ditto exceeding	200	Ditto	12

Section 57, 4 Geo. 4, c. 81—allows of 2 months as to *any* Amt. whether 4 or 400 Rs., unless sooner paid—and only in the Case of persons not receiving public pay. Sect. XXII. of Regn. XX. A. D. 1810—the same as to Natives not receiving public pay—though Decrees are limited to 200 Rs.

(5) See p. 39, Note 107.

(6) The Wording should have been, "and if such Debtor shall not receive Pay as an Officer or Soldier, or from any public Dept., &c. he shall, *if the sale of his Goods shall not satisfy the Debt*, be arrested, &c. and imprisoned, and for 2 months, unless the Debt be sooner paid —*and the Goods of the Debtor, if found, &c. at any subsequent time shall be liable to be seized, &c.*

is in lieu of stopping, monthly, any sum not exceeding the half-pay (proper) if the Sale of his Goods, &c. shall leave a balance unpaid. (7) Where Security cannot be given, Imprisonment is ordered, but should not be longer than 6 months; unless the Debtor fraudulently conceals property.

72.—*Instalments*—Should be made from the Pay and Allowances of Officers. Instalments.

1.—*One-Third*—(⅓) of the Pay and Allowances of Officers under the Rank of Field Officers.

2.—*One-Half*—(½) from Officers of, and above the Rank of, Field Officers. (8)

In the Case of Officers receiving any Staff Pay or Allowance beyond their Regtl. Pay and Allowances.

3.—*One-Third*—(⅓) from Officers receiving an aggregate Income under and not exceeding 600 Rs. per mensem.

4.—*One-Half*—(½) from Officers receiving above 600 Rs. per memsem. (9)

5.—*One-Third*—From all other persons receiving public Pay, &c.

6.—From persons not receiving public Pay, &c., the Amt. of Instalments at the discretion of the Court, taking Security—*See No.* 71.

7.—Provided that if there shall be any Prize Money, Donation Money, or any Gratuity, &c. received by, or due to any Officer, or other person receiving public Pay from Govt.—the Court may, in addition to the aforesaid Instalments, direct deduction to the extent of the whole or such portion of such Prize, &c. Money; according to the number and Amt. of the Debts due, and other circumstances.

(7) The Wording of this part of the 57th Section was copied from Sect. XXII. Regn. XX. A. D. 1810. "If sufficient Goods are not found within the limits, the Debtor to be arrested, &c. and imprisoned for 2 months, unless the Debt be sooner paid, and his Goods, if found, &c. at any future time, &c."

(8) See "*Decrees*," p. 37.

(9) In the Case of late Lt. Cullen, Arty.—the Comssr. (Sir C. Grey) decreed 1-3rd P. and A. when under 1000 Rs.—½ when above and under 3000 Rs.—and 2-3rd, when above 3000 Rs.—Calcutta Insolvent Ct., June, 1830—such would apply to *Civilians* as well as to *Mily.* persons in the Insolvent Court.

Execution. 73.—*Execution generally of Goods, &c.* ([10])—" If it is against the Goods, as many are sold as will pay the Debt, and the Costs; the Overplus, if any, is returned to the owner. A Bailiff is not wantonly to seize more than are necessary." ([11]) If the Goods found in the Debtor's house, &c. do not belong to him, but to another, they cannot be seized. ([12]) But if there be proved to be a fraudulent transfer of property to another, the Goods may be seized. ([13]) That Implements used in a Man's Trade shall not be seized; nor the necessary Articles, Wearing Apparel, or Furniture.

Sales. 74.—*Sales of Property*—Are public, and the Calcutta Court give 5 day's notice. The property if not claimed by another person, to be sold, and should be made known by a notice in writing in *English* and *Persian*, to be circulated in the Cantonment, and stuck up at the Kothwal's Chabootra, and in Bazars generally. The Articles sold, to be entered in the Book or Register of " Sales" which is to have an Index—and the Amt. value sold of the property to be entered. ([14])

Imprisonment 75.—*Imprisonment*—Where the Debtor is imprisoned the Creditor pays 1½ Anna " as *Diet Money*," per diem. ([15]) To be paid in Advance, monthly, for the ensuing month within 3 days after the Imprisonment. If the Debtor be a less time imprisoned—the balance to be returned to the Creditor. Within 3 days of the expiration of the first, and every succeeding month, the same advance to be paid. If not paid on demand, the Debtor to be released. The Debtor to pay the Amt. of " Diet Money," as well as the Debt, &c. ([16]) Fraudulent Debtors get no " Diet Money."

No Revision of Decrees. 76.—*No Revision of Decrees by Comg. Officer.* There is no Appeal from the decisions of the Mily. Court of Requests except to the Supreme Court. ([17]) The Comg. Officer may point out an *Error*, and the

([10]) See p. 38. ([11]) Hutton, p. 48.

([12]) Do. p. 49—" If an execution enters against the Goods, the landlord may prevent the seizure, provided rent is due, and they are not moved off his premises."

([13]) Hutton, p. 49. ([14]) In the Calcutta Court.

If the Goods are claimed by another person, his name and the names of Witnesses, &c. to be recorded.

([15]) Calcutta Court, and Circular, 1st May, 1829.

([16]) Calcutta Court. ([17]) Circular, 1st May, 1829, para. 2.

Court may rectify it, but he cannot direct their Proceedings to be *revised*, because he disapproves of the Court's Decision. Its Judgment is final. Nor can he disapprove of the Award, nor refuse to carry it into execution ([18]) unless the Decree be illegal, ([19]) in which case he cannot proceed to levy the sum awarded by the seizure and sale of the Goods, or to imprison the Debtor. ([20])

77.—*Rehearing Postponed Causes*—There may be a Rehearing of a Cause, if either party state the absence of necessary or material Witnesses ; or for the production of Accounts, &c. ([21])—and if a Court rejected any material Evidence either party may sue before another Court. ([22]) Rehearing.

78.—*Creditors*—Where there are several Claims against the same Deft., brought before the same Court at one day's sitting, the payments shall be made *rateably* upon all such Claims ; that is, so much *Per Cent.* of the Monthly Instalment paid on each debt. ([23]) Creditors.

([18]) Circular, 1st May, 1829, para. 3.

([19]) Do. para. 10. Where, now, the Court order payment by Instalments by persons not in receipt of public Pay contrary to Sect. 67—or where the Amt. of Debt decreed exceeds 400 Rs.—the Comg. Officer would not order the decree to be enforced. In the former Case if the Court be dissolved, he may order the Trial *de novo* before another Court.

([20]) Do. para. 10. ([21]) Calcutta Court.

([22]) "The Court must be satisfied that there are strong probable grounds to suppose that the merits have not been fairly and fully discussed, and that the decision is not agreeable to the justice and truth of the Case, before they will grant a new trial—3 *Black, Com.* 392—or on the grounds of the improper rejection of material evidence —3 *East*, 451.

([23]) I think if there were 2 Claims against a Deft. for 200 Rs. each = 400 Rs. and payment were ordered by Instalments of 200 Rs a month—it would be more fair to pay half to each, than to pay one his *full* Claim. It would not answer to delay deciding on these Cases, because there *might* be others to come—these two Debts are known. In Courts of Law an Action is brought, and the Court decides on it, without reference to any other Debt, on a priority of Claim alone, (in the Insolvent Court all D[illegible]s must be in the Schedule). Now, of the above two Debts, the first decided on might not have been first contracted—*Equity* should govern the Case—and the principle of the Insolvent Court prevail as far as Debts are known, at the time of the decision. There should be a Rule laid down—as, now, our Courts do not act upon the same Rules at all Stations. My object is uniformity and impartial Justice.

Register.

79.—*Register*—The advantage of a Register, with an Index of the names of the Pltffs. and Defts. is obvious —for without such a plan, how can any future Court know from what Month's Pay and Allowances to make Deductions!

Pay Master.

80.—*Pay Master, &c.*—Orders on an Officer's Pay and Allowances should be drawn by the President of the Court, signed by him, and by the Comg. Officer of the Station—and be sent to the Comg. Officer of Deft.'s Regt., &c., to be sent to the Pay Master: who shall make the decreed deductions, and shall not pay any *private Orders given by Deft.*, till the above Orders of the Court have been fully paid; which Deductions the Captain, &c. of the Troop, &c. shall also make (*he being informed of the Decree.*) The order to specify the Amt. of Decree. The Decrees to be signed by the President, and Officer Comg. the Station, in duplicate, one being given to Pltff. and Deft. The Pay Master shall certify in each Pay-statement—"1st, 2d, &c. Instalment of Rs. ——— on acct. of a Decree against ————," and the Captain shall endorse the same on the Deft.'s Copy of the Decree.

New Pay Master.

81.—*Corps going into another Circle of Payment.*— The Paymaster of the old Circle shall certify the Amt. of unadjusted Claims to the Pay Master of the new Circle of Payment; and the Comg. Officer shall, also, make a Report to the new Pay Master.

Moohummudan Law.

Moohummudan Law.

With respect to Natives of India in actions against each other, the Calcutta Court of Requests proceed according to the Law of the Parties—that is, where both are Hindus or Moohummudans.

Where the Pltff. is a Hindu and the Deft. a Moohummudan, and *vice versa*, the Law of the Deft. prevails.

In the liability of Heirs to the payment of Debts; the Law proceeds upon the proof that the Heir has received property from the deceased.

Of Debts and Securities.

According to the Moohummudan Law. ([24])

1.—" Heirs are answerable for the debts of their ancestors, as far as there are assets." Heirs.

2.—" If two persons jointly contract a debt and one of them die, the survivor will be held responsible for a Moiety only of the debt; unless there was an express stipulation that each should be liable for the whole Amount." Joint-Debt.

3.—" So also where two persons are joint Sureties for the payment of a debt, if one of them die, the survivor will not be considered as Surety for the whole debt; unless there was an express stipulation that each should be Surety for the whole, and that the one should be Surety for the other." Joint-Sureties.

4.—" It is different where two partners are engaged in traffic, contributing the same Amt. in Capital, and being equal in all respects, in which case the one partner is responsible for all acts done and for all debts contracted by the other. But this is not the case with regard to other partnerships, in which cases a Creditor of the Concern cannot claim the whole debt from any one of the partners severally, but must either come upon the whole collectively, or if he prefer his claim against any one individual partner, it must be only to the extent of his share." Partners.

5.—" Necessary debts contracted by a guardian on account of his ward must be discharged by the latter on his coming of age." ([25]) Wards.

6.—" In the attachment and sale of property belonging to a Debtor, his Money, in the first instance, should be applied to the liquidation of his debt; next his personal effects; and last of all his houses and lands." ([26]) Sales.

7.—" There is no distinction between Mortgages of lands and pledges of goods." Mortgages.

8.—" The Creditor is not at liberty to alienate and sell the Mortgage or Pledge at any time, unless there was an express agreement to that effect between him Pledge not sold, &c.

([24]) MacNaghten on the Moohummudan Law, 1825, chap. XI., p. 72.

([25]) Ditto, p. 73. ([26]) Ditto, p. 74.

and the debtor; as the property mortgaged is presumed to be equivalent to the debt; and as the debt cannot receive any accession, interest being prohibited."

If dies. 9.—"If a person die leaving many Creditors, and he may have pawned or mortgaged some property to one of them, such Creditor is at liberty to satisfy his own debt out of the property of the deceased debtor, which is in his own possession; to the exclusion of all the other Creditors." ([27])

INHERITANCE. ([28])

Inheritance. 1.—"There is no distinction between *real* and *personal*, nor between ancestral and acquired property, in the Moohummudan Law of Inheritance."

2.—"Primogeniture confers no superior right. All the sons, whatever their number, inherit equally."

3—"The share of a daughter is half the share of a son, whenever they inherit together."

4.—"Debts are claimable before legacies, and legacies (which however cannot exceed one-third of the Testator's estate) must be paid before the inheritance is distributed."

SHARES. ([29])

Shares. 1.—"The *Widow* ([30]) takes an *eighth* of her husband's estate, where there are children or sons' children, how low soever, and a *fourth* where there are none.'

([27]) MacNaghten on the Moohummudan Law, 1825, chap. XI. p. 75 —1.—"The Pawnee provides for the Custody, and the Pawner for the support of the thing, &c. pledged. Thus, if a horse, the Pawner provides the food—the Pawnee his Stable."—*Rule* 17, p. 74.

2.—"Where property may have been pawned and mortgaged in satisfaction of a Debt, it is not lawful for the Pawnee or Mortgagee to use it without the consent of the Pawner or Mortgager; and if he do so, he is responsible for the whole value."—*Rule* 18, do.

3.—"Where such property, being equivalent to the Debt, may have been destroyed, otherwise than by the act of the Pawnee or Mortgagee, the Debt is extinguished; where it exceeds the Debt, the Pawnee or Mortgagee is not responsible for the excess, but where it falls short of the Debt, the deficiency must be made up by the Pawner or Mortgager; but if the property were wilfully destroyed by the act of the Pawnee or Mortgagee, he will be responsible for any excess of its value beyond the Amt. of the Debt."—*Rule* 19, p. 75.

([28]) MacNaghten, M. Law, chap. 1., sec. i., p. 1.

([29]) Ditto, sec. ii., p. 3.

2.—The *Husband* takes a *fourth* of his wife's ([30]) estate, where there are children or sons' children, how low soever, and a moiety where there are none."

3.—"Where there is no son, and there is only *one daughter*, she takes a *moiety* of the property as her legal share."

4.—"Where there is no son, and there are two or more daughters, they take *two-thirds* of the property as their legal share," ([31]) and so would two sons, there being no daughters, take 2-3rds.

5.—"If there be only one son and the mother, the son would get *seven-eighths*—If one son and no other sharer, he would take the whole."

Responsibility as to Debts.

According to the Moohummudan Law, the heirs are answerable for the debts of their Ancestor as far as there are Assets, and no farther. And no one could recover from any one more than the share of the property inherited by the individual sued. Responsibility.

N. B.—Moohummudans are *Minors*, until the expiration of 16 years; unless symptoms of puberty appear sooner—MacNaghten, p. 62.

Hindoo Law. ([32])

1.—The heirs who take the Assets, are bound to discharge the debts of the deceased Debtor, as far as the Assets go. If the Amt. of the debt be larger than the property is capable of satisfying, the whole property left by the deceased must be given to the Heirs.

([30]) "According to Law, a woman is absolute proprietor of all property, real or personal, whether acquired by her on the occasion of her marriage, or otherwise, and when she dies it will be distributed, according to the Law of Inheritance, into four equal shares, of which, her husband will take one, her son two, and her daughter one share" —MacNaghten, M. Law, chap. I. sec. i. p. 254.

"Until the Dower is paid, the Estate (of the deceased husband,) cannot be distributed among his heirs"—do. p. 283.

([31]) Ditto, p. 4.

([32]) MacNaghten, Hindu Law, (1829) vol. 2, p. 277.

Creditors; and then his heirs must be considered as absolved also from all claims."

Survivor. 2.—"The Survivors are answerable for a debt contracted by their deceased partner, if the sum borrowed was applied to their use—or if one Member of a family contracts a debt for the use of the joint-family, the Surviving Members must pay the debt" (33)

Wives. 3.—"When wives, who, with the consent of their husband, assume the management of his family affairs, contract a debt, the liquidation of such debt rests with the husband; otherwise he is not answerable for it!" (34).

Missing Debtor. 4.—If a Man contract a debt while he lives with his brothers, as an undivided and united family, and subsequently becomes missing, the Debtor's brothers and wife who possess his Estate must pay his debts; without waiting for the expiration of 12 years." (35)

Deceased Security. 5.—"The Estate of a deceased Surety, is not liable for the debts of his principal." (36)

Father. 6.—"If a son dies childless, and involved in debt while the family were undivided, and the father has not received any assets belonging to his son, he is not bound to liquidate the debt; unless the debt was contracted by the son for the family support (37); or unless the father, after the debt was contracted, promised to satisfy the claim of his son's Creditor, in which case, the liquidation of the debt becomes incumbent on the father." (38)

Minor. 7.—"Neither the property, nor person of a minor is liable for the debt of his Ancestor. When he attains the age of majority (39), he must discharge the debt contracted by the father, &c." (40)

(33) MacNaghten, Hindu Law, (1829) vol. 2, p. 280, "but sons are not compellable to pay sums due by their father for spirituous liquor, for losses at play, for promises made without any consideration, or under the influence of lust or of wrath, or sums for which he was Surety, *except in the cases beforementioned;* or a fine, or toll, or balance of either."

(34) *Ditto*, p. 281. (35) Ditto, p. 282. (36) Ditto, p. 285.

(37) "Or for religious observances incumbent on the family."

(38) Ditto, p. 286.

(39) Not till after 16 years (in Bengal at the end of 15 years) vol. 1, p. 103.

(40) Vol. 2, p. 287—Necessary Debts contracted for an infant are binding on him, when of age, p. 289.

The Debts of an *Ascetic* follows his Assets in the hands of his representatives, p. 288.

8.—" The liquidation of debts is rigorously enjoined: for instance, it is provided that sons must pay the debt of their father, when proved, as if it were their own, that is, with interest, (and whether they have inherited assets or not. ([41]) The son's son must pay the debt of his grandfather, but without interest; and his son, that is, the great-grandson, shall not be compelled to discharge the debt, unless he be heir and have assets. ([41]) But in all cases, the liability extends only to just and reasonable debts." ([42]) General Rule. If Assets.

PLEDGE.

" A Pledge may be enjoyed until the debt is repaid." ([43]) Debts.

INHERITANCE.

1.—" All legitimate sons, living in a state of union with their father at the time of his death, succeed equally to his property, real and personal, ancestral and acquired." ([44]) Sons.

2.—" The right is admitted, as far as the great-grandson; and the grandson and great-grandson, the father of the one and the father and grand-father of the other being dead, will take equal shares with their uncle and grand uncle respectively. ([45]) Grand and Great Grandsons.

3.—" In default of sons, grandsons, and great-grandsons in the male line, the inheritance descends lineally no farther, and the widow inherits, in Bengal (proper), whether her late husband was separated, or was living as a member of an undivided family; but Widows.

([41]) Dig. vol. 1, p. 266—" According to Sir W. Jones, where there are no Assets, the son and grandson are under a moral and religious obligation, but not a Civil obligation to pay the debts."

([42]) Vol. 1, p. 127—see Note 33, ante.

([43]) Ditto, p. 275. ([44]) Ditto, p. 17.

([45]) " An adopted son is a substitute for a son of the body, where none exists, and is entitled to the same rights."

" In default of sons, the grandsons inherit, in which case they take *per stirpes*, the sons, however numerous, of one son, taking no more than the sons, however few, of another son."

" In default of sons and grandsons, the great grandsons inherit; in which case they also take *per stirpes*, &c." p. 18.

according to the best authorities ([46]) she succeeds in the former case only; an undivided brother being held to be the next heir." ([47])

Daughters. 4.—"In default of the widow, the daughter inherits, an unmarried daughter first, failing her, devolves on the married daughters who are indigent, to the exclusion of the wealthy daughters; in default of indigent daughters, the wealthy daughters are competent to inherit." ([48])

Payments.

"If the Debtor is unable to discharge the whole amt. of the debt, then, having paid by degrees, according to his ability, he shall record on the back of the original document, "So much has been paid by me;" or the Creditor shall account, on the back of the original document, for the sums realized or received by him, and record that so much has been paid to him." ([49])

N. B.—Where the debts of a deceased person are to be paid, it is necessary to know who are the persons liable, and to what amt. according to their shares—and Courts must at times consult—*MacNaghten* on the Principles and Precedents of *Moohummudan* and *Hindu* Law—from which I have quoted—in many districts, there are different rules.

Increase of Debts in Court of Requests.

I stated at page 103 as follows—

	European.	*Native.*
At Kurnal 1835,............	12,000	10,000
I find the true Amt. Do....	10,272	15,034
So that the Aggte. in 5 years was	37,409	27,018

And that in the *Native* Court, the year 1835 exceeded the previous 5 years; being from years 1830 to 1834—13,325 Rs.

([46]) The Benares School, "the fountain and source of all Hindu Law," and "if a man leave more than one widow, the property is considered as vesting, in only one individual—and until the death of all the widows, the property does not go to the other heirs of the husband." p. 20.

([47]) P. 19. ([48]) P. 21-2. ([49]) P. 280.

MISCELLANEOUS MATTER.

PRECEDENTS.

A.

ACCOMPLICE—Where hope was held out to an Accomplice, and he gave evidence by which the Principal was convicted of Murder—he was pardoned; but turned out of the Service with Ignominy.—G. O. C. C. 6th Nov. 1822. **Accomplice.**

ACQUITTAL, *unanimous*—" Sometimes as a mark of an *Hon'ble* Acquittal, the Court-Martial on Admiral Keppel, unanimously and hon'bly acquitted him."—p. 281, MS. J. A. G. O. **Acquittal.**

ADJOURNMENT—" *Sine die* can't re-assemble without Orders from Convening Authority."—G. O. C. C. 12th July, 1832. **Adjournment.**

Sine die, Members liable to do duty, but not to embark, go on leave, or on general duty. In case of any pressing necessity, for the Services of Officers, a reference is made through the A. G., if at home, or, if on foreign Stations, to the Genl. Officer Comg. before they are permitted to go beyond the reach of a call for the re-assembly of the Court."—G. O. H. G. 20th Decr. 1827.

Genl. Cts.-Martial have adjourned on account of the next day being *Xmas.*, or *St. John's Day*.—G. O. C. C. 29th Jany. 1820.

Owing to Sickness of a *Witness*, and the distance of his house.—G. O. C. C. 16th Oct. 1821.

At the request of Native Officers, it being a *Holiday*—trial at Delhi, of Subr. Emam Buksh Khan, 1st B. 26th N. I.—4th July, 1820.

From Soldier's *Library* to a Regtl. Room by D. O.

To consider Verdict, " when a *trial* has been of considerable *length*; it is common to adjourn the Court

and defer passing judgment to some future day.—Williamson's Annot. p. 67, Note 115—MS. J. A. G. O. p. 270.

Amanuensis. AMANUENSIS—See *Judge Advocate.*

AmicusCuriæ AMICUS CURIÆ—See *Counsel for Prisoner.*

Annonymous Letters. ANNONYMOUS LETTERS—Lord Tenterden said in an Action on such subjects—" I would advise all Annonymous Letters to be destroyed. If they produce no result—such as personal annoyance—they fail in their object; and will not be repeated."—K. B. April, 1822.

Apology. APOLOGY—in writing, if private, and made unconditionally and afterwards retracted by the maker, the Officer to whom made can't be expected to proffer the return.—G. O. C. C. (Madras) 6th Feb. 1832.

Appeal. APPEAL sometimes made by Petition.—G. O. C. C. 23rd Sept. 1826.

Where evidence at a Regtl. Ct.-Martial was only taken on *one* and found guilty on *both* Charges, and a material witness for defence refused to be heard—fair ground of Appeal to a Gl. Ct.-Ml.—(tho' the Native Articles of War did not give an Appeal).—G. O. C. C. 3d Feb. 1834.

From the decision of a Special Court of Inquiry (pecuniary claims against several persons, and ill-treatment) has been allowed.—G. O. C. C. 20th July, 1835.

From *competent* authority deprecated, except in very *sufficient* grounds, which should always be stated.—G. O. C. C. 12th Oct. 1835.

Must not be *direct* to the Comr. in. Chief, should go through Comg. Officers of Company, &c.—G. O. C. C. 23d Sept. 1826.

An Appeal has been made from a Genl. Ct.-Ml. by Petition to the *House* of *Commons* through a Member of Parliament.—(Capt. Robinson's Case) 27th Mar. 1833.

From *Regtl.* to *Genl.* Ct.-Ml.—the evidence taken before the Regtl. Court read over (with Prisoner's *consent*) to the Witnesses, re-sworn, and acknowledged to be corrçct.—See Case of Gunner Singleton, G. O. C. C. 20th April, 1827, (so in Lord G. Sackville's Case 1760—Tytler, p..133.) Note.

All Documents referring to an Appeal are read—the Petition of Prisoner—the Comg. Officer has been sworn

and asked if the Court assembled by his orders—and if he approved, &c. (there was no signature) read the Proceedings of the Regtl. Ct.—and Extracts from Defaulter's Book; such as were used at the first trial.

The Appellant stated his Case, examined his Witnesses—the Comg. Officer read a written Statement, and examined the Captain of the Prisoner's Troop—and then addressed the Court—the President of the Regtl. Court sworn and asked if Prisoner was allowed to cross-examine, &c. A Case at Meerut on 5th Dec. 1828—See p. 937, Hough, (1825) and p. 236 (1834.)

Apprentices. APPRENTICES from Mily. Orphan Society, usually have Indentures for 5 years, with the consent of the Govr. and Apprentice on the one part, and the Officer on the part of the Band, &c. (or other party), on the other part. *Terms:*—

1.—"Faithfully and diligently to work to the utmost of his power and skill, at all times, every day throughout the day and year, in every year, without wilful neglect—losing or making away with any of the Goods, Effects, Monies, or other things, *or disclosing their secrets.*"

2.—"Not to suffer others to injure property."

3.—"Not to marry without consent of the Master, &c."

4.—"Not to trade or traffic for self or others."

5.—"Not to be absent without leave."

Bond.—1.—"To furnish Clothes and Apparel (Linen and Woollen) Washing and Mending—Meat and Drink, and Lodging—and from all Actions, Suits, Costs, and Damages to keep him harmless, and indemnify the Managers."

2.—"To cause him to be taught and instructed."—See p. 197.

Approval. APPROVAL of Proceedings or Sentence, Synonymous with confirming—(Mr. Adv. Genl. Pearson.)

Arbitration. ARBITRATION with consent is not binding, nor does it bar an Action—unless with consent of both parties, and by order of a Court.—See p. 203.

Arms. ARMS, loss of—See *Stoppages.*

Arrest. ARREST—Close confinement of Native Officers lowers them in the eyes of the Sepoys, &c.—G. O. C. C. 19th April, 1821.

May be *relaxed* on application to the proper authority.—G. O. C. C. 30th Decr. 1826. If reported to

superior Authority, the Comg. Officer cannot release. Under *fixed Bayonets* improper, except in cases of the gravest nature, or apprehension of escape.—G. O. C. C. 14th Novr. 1834.

Of *Native Officers* should not be derogatory to their Rank.—G. O. C. C. 3d Nov. 1825.

Civil, if legal, good for *all* debts—opinion of the Judges.—K. B. 21st January 1774.

A Guard over an (European) Officer improper except in extreme cases when the nature of *close* arrest should be explained.—G. O. C. C. 8th July, 1826.

Proper, instead of *Confinement,* for Serjeants, &c. for ordinary Offences.—G. O. C. C. 23rd Sept. 1826.

And Charges sent in "either Trial, or satisfactory explanation."—G. O. H. G. 1st Feb. 1804.

A *President* cannot place a Witness in arrest for Perjury or Subornation of Perjury—improper under Sect. XIV. Art. XIX. G. O. C. C. (Madras) 27th June, 1836. The *Court,* and not the President, place in arrest on proper occasions.

An Officer placed in arrest, has no right to demand a Court-Martial, nor to persist in considering himself under the restraint of such arrest, after he shall have been released by proper authority; nor to refuse to return to his duty. The Officer if wrongfully arrested, or aggrieved, has as a remedy under the Articles of War (Art. 120, and Sect. X. Art. I.) King's Regns. and Ors. p. 199.—See above G. O. H. G. 1st Feb. 1804.

Auctioneer.

AUCTIONEER must be paid for goods sold at the Auction, tho' the buyer has a claim against the owner of such goods.—C. P. Lord Loughborough, 22nd Nov. 1788. *Decision.* "The Auctioneer had not only a clear possession of the goods, but an interest in them, as bound not only to defray all expenses incurred by the Sale; but the Law obliges him to pay the duty—verdict confirmed.—Annl. Regn. 1778, p. 221.

Commission, in England, House Agent 2½ P. C. on sums from 2 to 3,000£, this includes expenses. Under 1,000£ 2½ P. C. and also expenses. In *letting* houses, &c. for a long term, 10 P. C. on 1st Year's Rent. Before B. Gurney and a Com. Jury, 30th Jany. 1833.—*See* Effects of deceased Officers—Commission on *Sale,* p. 105, Note 6.

B.

Band Masters, in H. M.'s Regts., are usually inlisted for Life as other Soldiers, and generally are Serjts.—Some inlist, as such for 7 years—but cannot be treated as Soldiers, unless a special agreement is made to that effect. Band Masters.

C.

Camp-Followers' Servants, &c. are tried by a station on Line, &c. Court-Martial and by the Comg. Officer of a single Regt., &c. if detached—Lr. J. A. G. No. 158, 8th July, 1833.—See Regn. XX. A. D. 1810 —Sects. IV. XIII. XV. XVI. Camp-Followers.

Challenges (*duel*) unprovoked and outrageous conduct of Challenger, no ground for Pardon—but ground for Prosecutor exhibiting Charges.—G. O. C. C. 11th Decr. 1821. Challenges.

To *fight a Duel*—admission in Prisoner's letter in Evidence—" I demanded from Capt. —— that satisfaction, which his irritating language had goaded me to expect," and " if you refuse to treat with me in the usual way as Capt. ——'s friend, he will post you as a *Coward*"—the very words *posting*, proof of the Challenge (Officer acquitted).—G. O. C. C. 1st Oct. 1833.

Of Member at Ct.-Ml.—where the Captain of a Company had examined the Witnesses on both sides and had expressed a *wish* that the Prisoner should be tried by a *Genl.* instead of a *District* Ct.-Ml.—Court overruled the objection, as he had only done his duty. The Comr. in Chief said such examination implied a *preformed* opinion ; and the *wish* indicated an opinion of Prisoner's guilt—and admitted the force of the objection (sentence not confirmed)—G. O. C. C. 6th May, 1834, but see p. 132.

Where a Prisoner objected to a Member who did not *admit* the force of the objection—the Court *ordered* him to withdraw.—Lt. Col. *Bell's* Trial, Madras, 1st Nov. 1809.

Character—Where an Officer's Character was attacked in a Newspaper, his Comg. Officer called on Character.

him to give a satisfactory explanation, and to deny unequivocally certain assertions, which appeared in the Newspaper, of a Nature highly prejudicial to his character as an Officer and a Gentleman; he requesting the Correspondence should be laid before the Genl. Officer Comg. the Division—the Comg. Officer placed him in arrest and exhibited charges—for "conduct highly Unofficer-like and prejudicial to good order and Mily. discipline"—the Court acquitted him, most fully and hon'bly; and considered the charges frivolous, and vexations, and not originating in a desire to promote the good of the Service.—G. O. K. T. No. 609, 15th Feb. 1832—where another Officer wrote a letter in a Newspaper, signed his name, and never (though officially made aware of the publication and called on to do so) offered any contradiction or disavowal of the same —such letter containing charges against his former Comg. Officer—he was tried and sentenced to the loss of a Regtl. Step.—G. O. C. C. 31st Dec. 1835.

CHARACTER OF PRISONER—Considerations of good character should not govern the Sentence; but Court may recommend him to mercy.—G. O. C. C. 12th Nov. 1822.

Certificates of, not properly received and placed on record when no apparent cause for the non-attendance of the writers—G. O. C. C. 16th Dec. 1829.—Prisoner may produce *Defaulter's Book.*—G.O. C. C. 22d Sept. 1835—See *Native Doctor.*

Witnesses on Oath, as to *General Character* of the Prisoner, may be examined either by the Prisoner on Defence; or by Court for its own information, *after* the *finding* the Prisoner Guilty, to enable them to mete out Punishment (where the extent is discretionary) —Circular H. G. 24th Feb. 1830.

CHARACTER BOOKS are kept of men of good character—See *Defaulter's Book.*

Charges. CHARGES should not imitate the Minutiæ of the Civil Courts—details quite unnecessary before Mily. Courts—there should be no disgusting expressions of a drunken or mutinous Soldier (either in Hindoostanee or English)—"unsoldier like conduct"—or "insubordinate," or "improper language" being quite sufficient.—G. O. C. C. 26th Oct. 1835 by Comr. in

Chief in India—requesting conformity at Madras and Bombay.

Against Camp Followers and Menial Servants they should be designated as such—If Court doubt, may establish the fact in Evidence, and that had better be done before taking Evidence on the trial.—*D. J. A. G. Hd. Qrs. 7th Nov.* 1829.

Charges *framed* from the Minutes of another Genl. Ct.-Ml.—Adml. Keppel v. Palliser, *vol.* 4, *Celebrated Trials*, *p.* 600.

A Charge given up, the *principal* Witness being at Bangalore (Madras,) and no Witness who saw the fact present—trial at Meerut (Bengal)—Lr. A. G. K. T. No. 3518, 30th Jany. 1830.

Charge *withdrawn* by Prosecutor, there being no Evidence—not entered into.—See G. O. C. C. 31st Decr. 1829.

Charges against N. C. O. or Soldiers, the Prisoner's Regtl. *number* to be invariably inserted.—*Circular* Memo. 27th Sept. 1834.

CIVIL POWER (the *Mily.* in *Aid* of)—" It has been found, by experience, that when Troops have been called upon to act in Aid of the Civil Power for the maintenance of the *Public Peace*, or in the enforcement of the *Law*, and have, with a view to intimidation, fired over the heads of Persons riotously assembled, the effect has been, that lives have been lost, or wounds received, by persons taking no part in resistance to the Laws, and also that the parties engaged in such resistance have been encouraged to acts of greater daring and violence. In order to guard against the recurrence of such an evil, the Genl. Comg. in Chief desires that Officers Comg. Troops or Detts. will, on every occasion in which they may be employed in the Suppression of Riots, or in the enforcement of the Law, take the most effectual means, in conjunction with the Magistrates under whose Orders they may be placed, for notifying before hand, and explaining to the people opposed to them, that in the event of the Troops being ordered to fire, their fire will be effective."—G. O. No. 519, H. G. 27th March, 1835. Civil Power.

CLERK TO JUDGE ADVOCATE—There has some times been an Assistant to the J. A. or his Deputy, who Clerk to J. A.

is also *sworn*—an instance occurred at the Trial of a Colonel of the Foot Guards, at New York (Williams' Annot. p. 56, Note 94,) p. 26 MS. J A. G. O.

Comg. Officer. COMMANDING OFFICER—Cannot be the Prosecutor, Witness, and confirming Officer of a Regt. Court-Martial assembled by his Orders.—Lr. No. 294, J. A. G. 6th Oct. 1832.

Two Comg. Officers, in consequence of the state of their Regt., (Discord and Disunion, &c.) displaced, and allowed by the Genl. Comg. in Chief H. M. Forces, the option of retiring upon Half-Pay, or from the Service—by the Sale of their Commissions.—G. O. C. C. 7th March, 1836—See *Officers*.

Compensation COMPENSATION—See *Pay*, *Rations*.

Complaint. COMPLAINT—(pecuniary Claims) of a Serjt. against the Qr. Mr. of his Regt., before a Genl. Ct.-Ml.—decided in favor of the Serjt. The P. C. C. ordered payment to be made.—G. O. C. C. 8th April, 1835, (K. T. 31st March.)

Conductor Ordnance. CONDUCTOR OF ORDNANCE dismissed from his Situation—by a Genl. Ct.-Ml., and, by the Comr. in Chief, ordered to return to the rank (as Serjt. Major) he held before.—G. O. C. C. 15th Oct. 1823.

Confinement. CONFINEMENT, long—ground for Recommendation—not to lessen Sentence.—G. O. C. C. 2d Feb. 1828—See *King's Soldiers*.

Confirmation. CONFIRMATION—See *Approval*.

Contempts. CONTEMPTS—Jurors not attending Inquests are, and indictable.—Calcutta, 30th May, 1831.

Before *Courts-Martial*—the Court should order *Mily*. persons into Confinement, and instruct the J. A. to exhibit a Crime, upon which the Court (after deciding on their Verdict and Sentence,) may pass Sentence.—(Lr. A. G. 24th May, 1797.)

By *persons* Non-Mily., to be proceeded against in the Civil Court—see also p. 141, and Simmonds, (1835) p. 149.

Conversations. CONVERSATIONS—Language used in a Moment of Irritation, and unpremeditated regarding a Comg. Officer—in a private party—should not be charged against an Officer.—*G. O. C. C. 24th March*, 1831. But, where a Prisoner is on his Trial, no person can refuse to answer questions regarding confidential

conversations, the answer to which may exculpate the Prisoner—Since in prosecutions, even for High Treason, such communications are admitted—*Phillip's Law Ev. vol.* 1, *p.* 135—nor where the answer may subject the Witness to a Civil Action—*do. p.* 264, Note. If the answer would involve a criminal Prosecution he may refuse, (p. 262) but the remedy is to promise that he shall not be tried. The equitable course is to compel such evidence to exculpate a prisoner—but not to allow of any information so gained to form the ground for Charges.

Conviction.

CONVICTION—obtained, principally, under unauthorized promises of Pardon—Sentence remitted, but the Prisoner discharged the Service by the Comr. in Chief. —G. O. C. C. 24th Sept. 1823.

Convictions, previous.

CONVICTIONS, PREVIOUS—On Trials for Non-Mily. Offences not to be taken into consideration.—G. O. C. C. 14th May 1835.—Members should not be made acquainted with the Prisoner's previous bad Character (by seeing the Record of previous Convictions) immediately after Arraignment—a practice inconsistent with justice, and at variance with the Articles of War (Art. 84).—G. O. C. C. 26th Oct. 1835. (The attention of the Comr. in Chief at Madras and Bombay requested to the Order.) But, where a Court had so acted and it was not recorded in the Sentence—(presuming on the non-influence) the Sentence was approved.—G. O. C. C. 31st Oct. 1835.

To *record briefly* on the Proceedings—the Crime—Sentence—Approval—Infliction or Remission—Lr. No. 80, J. A. G.'s Office, 3d March, 1835.

In *Sentences*, simply to record, after having found the Prisoner Guilty—" and having taken into consideration 1, 2, 3, &c. previous Convictions ; do Sentence, &c." A District Court-Martial or other *Court cannot refuse to receive Previous Convictions.* (Sect. 21, M. A. and 84th Art. of War) The Opinion of the J. A. G. that " the option of offering, or not offering rests with the Authority assembling the Court. If due and legal notice of intention to produce such evidence be given to the Prisoner, and to the Court, the Court has no authority to refuse such evidence, (if in itself unobjectionable), or at their

discretion, to dispense with the same—" H. E. the Com. in Chief's Orders, that Officers employed on Cts.-Martial, shall act on this decision, until otherwise instructed."—(G. O. C. C. 25th July 1836.)—*See Previous Convictions*, p. 57, 123.

Corporal Punishment.

CORPORAL PUNISHMENT—"That the practice of punishing Soldiers of the Native Army by the Cat o'nine Tails or Rattan, be discontinued at all the Presidencies ; and that it shall henceforth be competent to any Regt., Detmt. or Brigade Ct.-Ml., to sentence a Soldier of the Native Army to dismissal from the Service, for any offence for which such Soldier might now be punished by flogging, provided such sentence of dismissal shall not be carried into effect, unless confirmed by the Genl. or other Officer Comg. the Division, &c."—(G. O. G. G. of India in C. No. 50 of 1835, 24th Feb. 1835)—See *Dismissal;* and *Native Christians* still liable to be flogged. *Exceeding* 300 *Lashes* to be confirmed by Genl. Officer Comg. Division, &c.—G. O. C. C. 1st Feb. 1821—this applies to the *European* Troops only now. In *H. M.'s Service*—1, in the Cases of Mutiny, Insubordination, and Violence, or using or offering violence to superior Officers—2, Drunkenness on duty—3, Sale of, or making away with Arms, Ammn., Accoutrements, or Necessaries, stealing from Comrades, or other disgraceful Conduct (to restrain it in the above Cases as much as possible, with safety to the Discipline of the Army).—*Circular, H. G. 24th Aug.* 1833. By Art. 72 of 1836. No *Genl.* Ct.-Ml. can Sentence to more than 200 Lashes—Art. 77—no *District* Ct.-Ml. to more than 150—and Art. 79—no *Regtl.* Ct.-Ml. to more than 100 Lashes.

In the *Madras Army* restricted (confined now to the *European* Troops,) to 300 Lashes by all Courts inferior to *Genl.* Ct.-Ml.—G. O. C. C. 16th June, 1827.

Correspondence.

CORRESPONDENCE—" To be sent through Comg. Officer on the Spot—1, that he may exercise his judgment as to the propriety of forwarding, or not, (and thus save Heads of Depts. useless reference)—2, and to afford elucidatory observations to enable the Comr. in Chief to form a competent judgment—3, Comg. Officer to form an opinion on what is laid before him, and to

refuse to forward what he does not sanction, and to send on whatever meets his approbation. The Comr. in Chief will attend to what is sent by a Comg. Officer: but will require strong grounds to be assigned by Officers sending Papers *direct*."—(G. O. C. C. 12th Oct. 1835.)

COUNSEL FOR PRISONER—(erroneously called *Amicus Curiæ*)—" Allowed to Soldiers (and may be a Soldier) at *District* Ct.-Martial, as well as at *Genl.* Cts.-Ml. upon the same principles of Justice as in the latter in which it has never been refused—there may be an exception to a *particular* individual, but some one should be allowed."—G. O. C. C. (Bombay) 22d King's, No. 178, 20th March, 1832, para. 7—and upon the same principle at Regtl. Cts.-Ml. A *particular* individual has been objected by a Prosecutor, as he might be a Witness.—G. O. C. C. 22d Oct. 1834. Counsel for Prisoners.

" Not the usage of such persons to assume a distinct and substantive character—nor can he claim exemption from examination as a Witness; from his situation of confidential adviser of the Prisoner."—(G. O. C. C. 16th July, 1830.)

" In the Case of a Soldier of the European Regt. tried at Agra, for *Murder*, the Adjt. after having been examined as a Witness for the Prosecution (being a Witness on Defence only as to *Character*,) was allowed, at the recommendation of the J. A. to remain in Court to assist the Prisoner."—G. O. C. C. 14th March, 1829.

Counsel are allowed to Prisoners in the *French* Army.

On the Trial of Sir John Jeffcott, for Murder, (killing Dr. Hennis in a Duel) at Exeter—Mr. Manning spoke to the Court to prevent Dr. Edye, (connected with the Duel) who was sworn, from being examined—he (Dr. E.) objecting: before Jus. Patterson, 22d July, 1833—this as *Amicus Curiæ*.

COURT should prevent the use of abusive language to Witnesses before the Court—or improper language towards Mily. Authorities, or J. A.—(G. O. C. C. 25th Oct. 1834)—See Art. 94 (*King's*) Court.

Improperly sworn (on a Prayer Book) must be re-sworn, and re-commence Trial—See G. O. C. C. 30th Jany. 1834.

Where *more* Prisoners than *one* are arraigned upon difft. Charges, and tried by the same Court Ml. the Court is to be re-sworn at each Trial—"and the Proceedings are to be made up separately, and signed, as if each Prisoner had been tried by a distinct Ct.-Ml." —Genl. Regns. and Ors. p. 200.

On the Trial of Lt.-Col. Bell, Arty., Madras, Nov. 1809—the Court took two days to deliberate.

Ct.-Ml., Genl. COURT-MARTIAL, GENERAL—The Regt. to which the President and Members, &c. belong to be inserted —if on the Staff, his Rank and Situation. Proceedings not to be carelessly and inaccurately written—nor with erasures, and interliniation—(*Circular* Memo. H. G. 6th April, 1831.)—Staff Officers are put on District Cts.-Ml. at places where there are few Officers with Regts., &c.

Under the Act for the Suppression of *Rebellion* in Ireland—

1.—No Officer under the Rank of Captain.

2.—If more than 7 Members, 7 to agree in Verdict, &c.

3.—If of 7 Members, 5 to agree, &c.

4.—If of 5 Ditto, to be unanimous.—(March 1833.)

District. COURT-MARTIAL, DISTRICT OR GARRISON—Date of Confirmation to be affixed, it being required to be noticed in the Monthly Return of Cts.-Ml. No. 642.—G. O. K. T. 11th June, 1832.

The Regts. to which the President and Members belong to be inserted, &c.; for the rest—See Genl. Cts.-Ml. above. These Courts are for the Trial of N. C. O. and Soldiers—*Genl. Regns. and Ors.* p. 200. —"When the Regt. is not under the Orders of a Genl. (or other Officer having a Warrant to approve) the Proceedings are to be sent to the Adjt. Genl. for the approval of the Comr. in Chief."—*do.* p. 201.

Brigade. COURT-MARTIAL, BRIGADE (OR LINE)—Not bound by the exact Limit of *Regtl.* Ct.-Ml. as to Sentence.—Lr. J. A. G. No. 968, 28th June, 1831.

Regtl. COURT-MARTIAL, REGTL.—The Comg. Officer who Orders a Trial must, legally, approve, or confirm, &c. the Sentence, under the Articles of War—and should give the benefit of his judgment, as to circumstances, or as to Prisoner's character—tho' the execu-

tion of the Sentence may rest with the Genl. Officer (*Lr. No.* 1594—18*th March*, 1828.)—This refers to the Case of Native Soldiers *dismissed.*—(See *Dismissal*) and where more than 300 Lashes are inflicted—(See *Corporal* Punishment.)

Inferior.

COURT-MARTIAL (*inferior*)—Presidents of Cts.-Martial to recollect, that there are Authorities (J. A.) in every Mily. Division, whose duty it is to remove any doubt, relative to the Construction of the M. A. or Articles of War; and that when a doubtful point arises, it is preferable to refer to the Officer who is responsible for the Decision he gives; rather than to trust to any Member of the Court.—(G. O. C. C. 25th July, 1836.) See *previous Convictions* and *Remarks.*

Drum Head.

COURT MARTIAL (DRUM HEAD)—See *Line of March*, p. 64—Field or Drum Head Cts.-Ml. "the assembling a proper number of Officers immediately on the Spot, who examine into the matter in a Summary manner, and pass Sentence, without any Record or Register of their Proceedings being made. On actual Service, where immediate examples are often required, but not in times of profound Peace, when the Proceedings will admit of the legal and necessary delays."—*Adye*, p. 86. (1).

(1) *Capt. Simmons*, p. 37, says "but since it has been requisite to administer an Oath to the Members of, and Witnesses before, Cts.-Ml. other than Genl." (since 1805, and deprecated by the Duke of Wellington, as altering it from a Court of Discipline and Honor, into a Court with regular Evidence and a great deal of perjury—See his Evidence before the *Mily. Commission* in 1835)—"they have fallen into desuetude. The M. A. (Sect. 15) and Arts. of War (92) still authorize a deviation from the prescribed hours, in cases requiring an immediate example;—it is, therefore, perfectly regular, in such cases, to assemble a Ct.-Ml. on the spot, at any hour; but the Ordinary Rules must be adhered to, &c. in the administration of Oaths, and in reducing the Proceedings to writing."

The Author of the Mily. Law of England, (*Williamson's Arr.* 2,106) p. 57, says "sometimes the Accusation and Sentence are written on the Drum Head, &c. commonly held in Cases of *Mutiny* or *Sedition*, refusal to obey an order, or where a Soldier is detected in marauding with goods upon him. A simple entry is made in the Regtl. Book of these Field-Drum-Head Cts.-Ml."

The Duke of Wellington in his Evidence stated that such Courts were not common in the Peninsula, were not required in Cases of *plundering*, as the *Provost Marshal* punished those caught in the *fact*—See *Provost Marshal*, p. 64, 75.

Ct. of Inquiry. COURT OF INQUIRY—"Where the Character of an European Officer is implicated, &c. should be composed of European Officers.—(G. O. C. C. 18th Feb. 1826.)

Swearing Witnesses at, unauthorized and illegal, a Court of Inquiry has no Power by Law, or Usage, to administer an Oath. No Prosecution for Perjury would be maintained.—(Lr. No. 54, J. A. G. 15th March, 1834. (²)

The Original Proceedings of a Court of Inquiry are usually laid before a Court-Martial, as a reference, and have been ordered to be transmitted with the Proceedings of a Genl. Ct.-Ml.—(Lr. Adj. Genl. K. T. No. 3518, 30th Jany. 1830.)

Courts of Inquiry are submitted to the Comr. in Chief by the Adjt. Genl.

Cts. of Inquest COURTS OF INQUESTS—See *Inquests*.

Court of Requests. COURTS OF REQUESTS—It is said that Decrees against an Officer must be satisfied before Regtl.

In the Case of plundering, Soldiers not being caught in the fact by the Provost Marshal, &c. it might still be necessary to try the party and punish him on the spot—and in the Case of Mutiny, &c.

A Comg. Officer of one of H. M.'s Regt. was found Guilty of having, "on the March, from *Villa de Cierro* to *Cedorem*, and at the latter Village, inflicted Corporal punishment on several N. C. O. and Soldiers without any trial, sufficient Officers being present to have formed a Ct.-Ml.—(there were other Charges) and was "*Dismissed*" —G. O. H. G. 15th May, 1813. The Comg. Officer in his Defence stated, that the Marq. of Wellington had issued positive orders on the Subject of plundering (the above being a Case of the kind) that on one occasion, (immediate punishment being necessary) the Articles of War were not present, but with the baggage of the Regt. then about to march, consequently a Court-Martial could not have been sworn. —See the Case in my Work, (1821) p. 402—4.

In *extreme* Cases the swearing the Court and Witnesses might be dispensed with—the *necessity* being recorded—a report being made as laid down in Art. 85. As to the Absence of the Articles of War, Officers well know the punishment they can award—the Crime and Sentence, &c. to be afterwards recorded.

(²) At a *Special* Ct. of Inquiry held at Bhagulpoor, the Witnesses were directed to be sworn, their Depositions before a Magistrate, having been previously taken on Oath.—Lr. Adjt. Genl. 28th March, 1816.

In the Case of a Pay Master accused by his Treasurer, the *Special* Court were ordered to take Evidence on Oath, "should the Court deem it necessary to elucidate the truth."—Lr. No. 426—Secy. Govt. Mily. Dept. 24th January, 1823.—*See.* p. 169 and 171.

Debts.—(Lr. Adj. Genl. No. 1609, 3d September, 1835. (3)

King's Soldiers,—amenable to, under 4 Geo. 4, c. 81, but under Article 111 of the Articles of War, the Comg. Officer or Captain can't be called on to enforce *Awards* of such Courts beyond the Amt. of such "*Balances*" as may be due to Soldiers, after payment of Regtl. Necessaries, &c.—(*Lr. No.* 2191, *Adjt. Genl.* 28*th Nov.* 1835) "In England, notwithstanding the 111th Article, Soldiers are by Clause 3 M. A. liable to Actions of Debt, and if of 30£ to be taken from the Service; so amenable to 4 Geo. 4, c. 81. A debt to a *Captain* prior to that of a *Creditor*. If an Officer be in debt, the Insolvent Court always leave him sufficient for subsistence and necessaries; without which he is inefficient.—("*Memo. J. A. G. to Mily. Secy. to Comr. in Chief*."

Comg. Officer can't Order the Court to reconsider a Decree unless in Cases falling under paras. 3d (4) or 10th (5) of Circular, A. G. O. 1st May, 1829. The Court determine whether Pltff. or Deft. or both shall be sworn. Pltff. at a distance should transmit an Affidavit to the truth of his claim. A Member can't voluntarily retire, nor can the Court direct his retirement. If there be a Case against a Member, as *Interest* in a Case incapacitates as much as *sickness*; the remaining Members, if 3 Officers remain, may decide the Case.—(*Lr. No.* 305, *O. J. A. G.* 16*th June*, 1835.) (6)

(3) Which must mean Regtl. Debts not decided on by the Court of Requests,—undecided Claims. In the Case of the Death of an Officer—Regtl. Debts would be paid first—See p. 104—and no Decrees of a Court of Requests are mentioned.

(4) May point out an Error—and Court may correct—can't order to revise.

(5) If the Decree is illegal, he can refuse to order payment.

(6) It is said that it has been *decided* by the *Law Officers*, that the *Native* Court of Requests, and the Witnesses should both be sworn; and that on a disputed Case, you cannot adjudicate, but by Evidence on Oath—See p. 190 of my Work, (1834.)

I do not see how they can be sworn till the Govt. passes a Regn. to such effect—

As Regn. XX. A. D. 1810, does not direct an Oath to be taken, my learned friend cannot, legally, contend that they can administer an Oath without legal authority—for no Oath is legal without an Act of

Credit to Soldiers.

Credit to Soldiers—Credit allowed to Officers and Soldiers in their Regtl. Bazars, under G. O. G. G. in C. 15th Jany. 1811, to the extent of Grain for Officers' horses, and to Sepoys, &c. to the extent of daily Rations, per man, payable on the *issue* of the Pay, &c. for *the* month in *which* contracted. Since the Courts of Requests were established (in 1824)—it was found necessary, on representation as to the increase of Soldiers' Debts (both *Europeans and Natives*), to publish G. O. C. C. 5th July, 1830, and unfortunately.—G. O. C. C. 19th Decr. 1834, has operated to the increase of claims before the Courts of Requests—*See* p. 103 and 200.

Crimes.

Crimes—To be tried by a *Genl.* Court-Martial—"striking or kicking a Serjeant—Quitting Post"—By a *District* Ct.-Ml. "Drunkenness on Duty under Arms—Drunk when Sentry—on Duty—or Piquet (except perhaps on the Line of March."—(*G. O. H. G.* 13*th May*, 1833—See *Genl. Ct.-Martial.*

Custom of War.

Custom of War *(and if any doubt, &c.)*—"Hence we may infer, that where the Act is silent they are to be guided by the *Custom* of *War*."

"In the Articles of War for the Govt. of the British Troops in the Netherlands, during the Duke of Marlborough's. Command, are these words—"All Mily. Controversies are appointed to be Summarily heard and determined at a Court-Martial," p. 132. *MS.* J. A. G. O.

D.

Debts.

Debts in whatever place contracted, if not exceeding 400 Rs. must be in a Court of Requests composed of Mily. Officers and not elsewhere, and that if brought into the Supreme Court might plead in bar of Trial —(Mr. Adv. Gen. Pearson, Sept. 1830.)

Defaulters' Book.

Defaulters' Book—May be produced by Prisoner as to Character.—G. O. C. C. 22d Sept. 1835.

Parliament, or of the Govt. of India. I propose the *Native* and *European* Courts of Requests to be one Court, p. 181.

Statute of Limitations.—I conceive that a Debt, if contracted before the Act 4 Geo. 4, c. 81—has been *revived* or *acknowledged since* the Act was in force; provided the party was at *such* time amenable to the Act would be cognizable before a Mily. Court of Requests.

Defaulters' Book should be kept in each Troop or Company—also, a Genl. or Regtl. one to contain all those of bad (not those of trifling or minor) Characters—and an Alphabetical List be made yearly, of men who have disgraced themselves. The names of the N. C. O. and others who were Witnesses to the offence to be entered, and the date, and to be examined in presence of the Captain, &c.—See Circular, H. G. 24th June, 1830—See *Character Book*.

DEFENCE—" Absence of Witnesses, the disadvantage inferred from *Circumstances*, not from the mere assertion of the Prisoner."—G. O. C. C. 5th June, 1822. Defence.

Where a Defence was delivered in, in English, by a Native Soldier ignorant of the language and intemperate in style—presumed that he was not aware at the time of giving it in that it was injurious to his cause.—G. O. C. C. 22d Oct. 1834. Where there are many charges may introduce Evidence on each with observations; but contrary to the Practice of Cts.-Ml. to allow observations and comments at all stages of the Defence, and on subjects foreign to the inquiry.—G. O. C. C. 25th Oct. 1834.

On the Trial of Capt. Burslem, at Limerick, Augt. 1835, the Defence was read by a Solicitor—and in the Case of Capt. Leyton, Royl. Marines, at Woolwich, the Defence was read by a Barrister.—Naval and Mily. Gazette, 27th Feb. 1836. " It has been determined, that a Judge sitting at *nisi prius* has the power of fining even a Deft. conducting his own Defence to a Criminal Charge, for contempt of the Court in the course of that Defence."—*Black. Com.* vol. 4—126, Note (9).—See *Proceedings* returned.

DEPOSITIONS—The Depositions of Officers leaving Stations, if intended to be used at a Ct.-Ml. should be made with the consent, and in presence of the Prisoner.—G. O. C. C. 22d Oct. 1834. (7) Depositions.

(7) " Depositions are also sometimes taken in Criminal Cases, by the *consent* of the Prosecutor and Deft. when a Material Witness is about to leave the country, or resides abroad. But if the trial comes on before his departure, or after his return, the Depositions cannot be read"—*Russell*, vol. 2, p. 663.

Taken before a *Coroner*, though not in the presence of the Prisoner, are evidence against him.—*Jervis Cor.* p. 218, and *Russell on Crimes,* vol. 2, p. 661. Starkie, 2—489.

On the Trial of Col. Cosmo *Gordon,* the Depositions of such Witnesses as had given testimony on the Trial of Lt.-Col. *Thomas,* and were dead (8) or dispersed, were read, and entered as part of the Proceedings; with the consent of the Prisoner—p. 11, MS. J. A. G. O.

" A Prisoner upon his trial is not entitled as of *right* to see the Depositions taken before the committing Magistrates.—*State Trial,* vol. 31, p. 835.

Desertion.

DESERTION — thereupon (on conviction) under Article 82—Deserters forfeit all advantage as to Addl. Pay and as to Pension on Discharge. No specification of such Forfeiture required in the Sentence.—*Cir. War Office,* No. 759, 31st Oct. 1833.

DESERTERS (*Native Soldiers*)—have been Sentenced to Imprisonment with hard Labour on the Roads.—G. O. C. C. 28th Dec. 1835. (9)

From *Post* and carrying off *Property* should be regarded as a Capital Offence.—*(G. O. C. C. 22d July* 1822 and *24th April,* 1828.*)*

(8) " Resolved by all the Judges in Lord Morley's Case, that Depositions taken before a *Coroner*, upon proof of the death of the Witnesses, or their inability to travel, and Oath made by the *Coroner* that the Depositions are unaltered, or upon proof that the Witnesses have been withdrawn by the Prisoner, may be admitted in evidence for the Crown on a trial for *Murder.*"—*State Tri.* vol. 6, p. 770, 776. Such a Deposition admitted in Evidence on *Harrison's* Trial for *Murder,* where there was reasonable ground for suspicion that the Witnesses had been kept out of the way by the procurement of the Prisoner — Vol. 12, p. 852 and Note.—" It may now be considered a settled rule, that if it be satisfactorily proved, that the Witness is *dead,* or *insane,* or that he has been kept away by the practices of the Prisoner, or, as it is said, if he is prevented by sickness from attending, or is unable to travel, his Deposition may be given in evidence on the trial of an indictment; provided the Deposition were duly taken on Oath, in the presence of the Prisoner, when charged before a Magistrate.—*Russell,* vol. 2, p. 660.

" A Deposition is admissible in evidence, after the *Death* of the Deponent, not only upon the trial of the Prisoner for the offence with which he was charged at the time they were taken, but upon an indictment for any other offence."—*Russell on Crimes,* vol. 2, p. 662.

(9) A Sepoy for Desertion 9 years before—sentenced to 3½ years Imprisonment, with hard labor on the Roads.—G. O. C. C. 18th Aug. 1835.

Desertion to the Enemy should be considered a Capital Offence.—G. O. C. C. 1st Feb. 1826.

Desertion is not confined to the *Time* of *absence*. ([10])

In *Russia* the Village, &c. which gives a Deserter shelter is fined. ([11])

DISCHARGE *(with Ignominy)*—"The Regiment being assembled, the man to be discharged is brought forward—the several Crimes and Irregularities he has been guilty of, and the Order for his Dismissal from the Service, are to be read, together with his Discharge, in which is to be noticed his Ignominious and Disgraceful Conduct. The Buttons, Facing, Lace, and any other Distinctions, are then to be stripped from his clothing. He is to be marched down the Ranks, and trumpetted or drummed, out of the Barracks, or Quarters of the Corps."—(*No.* 481, *G. O. H. G. 6th August,* 1829.) ([11]) *a* Discharges.

DISCHARGES (*modified Pension of* 15*th Sept.* 1832) —"The proportion, until further Orders, is limited to 20 Individuals per annum, in Regts. on Foreign Sta-

([10]) Private Jas. Mckenzie, 45th Foot, was tried for Desertion *between* 4 *and* 5 *P. M. and not returning till* 7 *P. M. same Evening*, and Transported for 14 years.—G. O. K. T. No. 634, 14th May 1832.

([11]) "In every Village or Place, where unknown to the Lord, a Deserter or Fugitive finds a forbidden shelter with a Peasant, the community of these Peasants shall be condemned to a fine of 2000 roubles, for every Deserter. "If this shelter is given with the knowledge of the Lord of the Village, he shall pay the same sum, independently of that paid by the Peasants. If the concealment has been effected by the Lord, and if the Deserter has been received into one of the Villages by him, in that case the Lord shall be obliged to pay alone the sum of 2000 roubles for every Deserter; besides being liable to the other rigours of the Law. Whoever shall denounce a Deserter or Fugitive, shall receive for each individual a reward of 500 roubles derived from the fine imposed on the harbourer," (*late Ordonance*) Annl. Regr. Augt. 1822, vol. 64, p. 137 chron.

(*a*) ([11]) This is under Art. 77—by a *District* Ct.-Ml. and is a *recommendation* of the Court, (and is not part of the Sentence) and must be approved by the Comr. in Chief. A Gl. Ct.-Ml., even, would not *award* such a Sentence—A Sentence of Discharge in the Case of a King's Soldier is improper.—Lr. Com. in Chief, 19th Aug. 1832. No. Soldier can be discharged except by order from the Horse Guards, Genl. Regns. and Ors. p. 66, except when recommended by a *District* or Genl. Ct.-Ml. In the Case of a Soldier Sentenced to 12 months Solitary Imprisonment *for Theft*, and recommended to be discharged with Ignominy—the *Discharge, &c.* was not sanctioned—as under Art. 102, *Transportation*—(a more judicious punishment in the E. Indies) was available for the removal of such Criminal.—G. O. P. C. C. 21st July, (K. T. 17th) 1835.

tions."—(*Cir. Lr. to Comg Officers, Regts.* and *Depôts —H. G. 18th Decr.* 1832.) ([12])

Discipline. DISCIPLINE—Nothing tends more effectually to establish Discipline and Subordination, and to prevent Irregularity producing Exposure, than habits of general Courtesy, and a Conviction constantly operating on the mind of the Soldier, that as he is marked by his good Conduct, so will any disorderly or improper act committed out of his Lines become the subject of particular notice."—(*Cir. H. G. 24th June,* 1830.) *Laxity* of Discipline, severely commented on.—*See* G. O. C. C. 2d July, 1836—title "*Sentences.*"

Disgraceful Conduct. DISGRACEFUL CONDUCT—1, Means any Offence of a disgraceful Nature, and that for which Soldiers may be tried under Art. 77, and for *repeated* Offences —2, Also, confirmed Vice, and all unnatural Propensities, indecent Assaults; repeated Thefts ([13]) and Dishonesty; Ferocity in having maimed other Soldiers or Prisoners—3, Which may render them unworthy of being retained in the Service, from Vice or Misconduct."—(*Cir. No.* 649, (6246) *War Office,* 23*d Nov.* 1829.)

Dismissal. DISMISSAL (instead of *Corporal Punishment* in the *Native Army*)—In Cases of "Stealing—Marauding—Violence on a March—gross Insubordination—serious Offences against Discipline—or Actions of a disgraceful and infamous nature, unbecoming the character of a Soldier."—(*G. O. G. G. of India in C. No.* 50 *of* 1835, 24*th February,* 1835.) ([14]) A Descriptive Roll

([12]) See p. 88, Note 6—*Medals*—"A Silver Medal granted to such N. C. O. and Soldiers as shall, on discharge, receive the *Gratuity for good Character and Meritorious Service* authorized by the 50th Article of the Regns. annexed to the Rl. Warrant of 14th May, 1829. The Medal to bear on the *Obverse,* the King's Arms, with the rank and name of the Soldier, and the year in which delivered; and on the *Reverse,* the words "*For long Service and good Conduct.*" *Report* to be made to the Adjt. Genl. of the names of N. C. O. and Soldiers to whom Gratuities have been granted, in order to the preparation and transmission of the Medals; so as to be delivered to them on the Regtl. Parade—(where practicable) with the Parchment Certificate of Discharge, in which the Grant will be recorded."

In all Cases (whether delivered on Parade or not) the Grant to be announced in R. O.—(G. O. No. 498—H. G. 16th Oct. 1830.)

([13]) See Note 11 (*a*) bottom.

([14]) These Crimes are laid down in, G. O. C. C. 19th March and 16th June, 1827—and Cir. No. 1661 (A)—2d Nov. 1832.

should be sent with the Proceedings to the General Officer of the Division.

DISTRICT COURT-MARTIAL—The Comrs. in Chief in India, &c. delegate to Genl. or other Officers, the power to hold District Cts.-Martial; not being under the rank of a Lt.-Colonel.—*(Cir. No.* 658, 24th *March,* 1830.*)* District Court Martial.

DRUNKENNESS — Crimes committed under no excuse.—See *Recommendation.* Drunkenness.

DRUNKENNESS ON AND OFF DUTY *(habitual)*— On the Trial of Soldiers—that in the previous instances, which it becomes necessary to bring forward, the *occasion* and *dates,* when the Offences took place to be distinctly specified."—*(Cir. H. G. 4th Jany.* 1830.*)*— See p. 83. ([15])

DRUNK ON DUTY—An Officer appearing in the Mess-Room to take his Seat as Member (warned in R. O.)—*Cashiered,* G. O. K. T. 25th Oct. 1834. ([16])

DUTY—Recruits should not be placed on duty, as *Sentry,* till dismissed from Drill—and have heard the Articles of War read.—G. O. C. C. 9th Sept. 1824. ([17]) Duty.

([15]) Drunken Soldiers should not be visited by a N. C. O., when in Guard —(unnecessary personal intercourse facilitating Insult) when in that state—to wait till the man be sober. *Remarks* on a trial for striking a N. C. O. in the execution of his duty.—(G. O. P. C. C. 15th July, (King's 11th) 1831.

If under the influence of intoxication should not be warned for any duty.—G. O. P. C. C. 19th July, (King's 14th) 1834. " N. C. O. to take no part in their confinement than ordering an Escort of Privates to place them in restraint. If a N. C. O. comes himself forward into collision with the irritated drunkard, violence generally the consequence, and perhaps a *Genl.* Ct.-Ml., whereas by keeping aloof, a punishment, for the offence already committed, by the Comg. Officer or a *Regtl.* Ct.-Ml. would do. *Drunken Men* should, if possible, be confined by *themselves* in the *Conjee House,* until sober ; and *not* in the *Guard Room,* where they are often teased and provoked to acts of violence and insubordination,—(G. *O. C. C. 16th March,* 1835.)

N. C. O. to be warned that if a drunken Soldier has been provoked by personal interference, and language, when taken into custody, or the unnecessary intrusion upon him when in confinement, if a N. C. O. —he will be tried for *Disobedience* of *Orders.*—(G. O. C. C. 1st May, 1835.)—See *Note* 16.

([16]) Where a Soldier was tried for being drunk while Sentry, the Sentence was *disapproved ;*—as he must have been drunk when put on duty—offence attaches rather to those who put him on duty.—(*G. O. P. C. C. 26th July,* 1834.)

([17]) In Cases of emergency or a great want of them for duty there may be an exception.

Dying Declarations.

DYING DECLARATIONS—Officers and others when summoned to receive the Dying Declarations of a wounded, &c. person, should recollect that the Life or Death of a Prisoner may be entirely dependent on the correct manner in which they receive, and recollect the testimony given by a dying man; to receive with great care, and to sift it as far as the situation of the dying man will allow; but also to commit to paper the *very words* of it as soon afterwards as circumstances permit; so that the testimony to be given on the Trial may be free from every phrase or mode of expression evincing any distrust of the recollection of the Officer, &c.—(*G. O. C. C. 25th March,* 1836.) ([18])

E.

Enemy.

ENEMY aiding and abetting deserves a Sentence of Death.—(G. O. C. C. 28th Jany. 1826.)

Evidence.

EVIDENCE—essential to the due investigation of Justice, if legal, admissible; tho' it may relate to the Conduct of Officers, &c. not before the Court as parties.

The Court should not receive on the Defence, Evidence of the same nature which was refused on the Prosecution.

The Evidence of the Wife admissible in favor of a Prisoner, where the prosecution is on the part of the Crown—the Evidence being for or against the Crown or the Prisoner, and not affecting the Husband.—(*G. O. C. C. 31st Decr.* 1829.)

Affidavits being Evidence, should be in the body of the Proceedings.—(*G. O. C. C. 12th July,* 1832.) ([19])

([18]) "Dying Declarations inadmissible, unless relating to the *Cause* of Death."—Trial of Sir Jno. Jeffcott, who killed Dr. Hennis in a Duel at Exeter, before Jus. Patterson, 26th July, 1833.—*Russell on Crimes,* vol. 2, 687.

If possible should be in the presence of the accused, or before competent Witnesses. "A situation so solemn, and so awful, is considered by the Law as creating an obligation equal to that which is imposed by a positive Oath administered in a Court of Justice.—*Russell, vol.* 2, *p.* 683. The consciousness of the dying person of his approaching end, is a question for the Jury, p. 687. The dying declarations of a Convict are not evidence—*do.*

([19]) *Hospital Case Book*—competent to Medical Officer to refer to it, to establish the Case of Prisoners in Hospital, and admissible on the Cases of the Patients therein recorded.—*G. O. C. C. 1st Sept.* 1834.

It is not necessary to prove a common Mily. Order the existence of which is known to every Officer.—(Lr. No. 244, J. A. G. 6th Oct. 1821.)

Court of Inquiry—The Proceedings cannot be brought in Evidence—may ask a Witness if he did not at such a place and time say so and so, if he admits he did, the object in discrediting him is effected;—if he denies it, you may bring one of those who heard him, to prove it.

If a Prisoner is charged with having accused the Prosecutor, &c. of having committed a Felony, he (the Prisoner) may produce the record of the Conviction and Judgment.

As to the Evidence on a *former Trial.* ([20])

As to *Hearsay Evidence.* ([21])

All Evidence should be recorded on the Proceedings in the order in which it is received by the Court. ([22])

F.

FEES (*Clerical*) for sacred Offices performed to Mily. Persons, prohibited throughout the Bengal Presidency. ([23]) Fees.

Letters not proved in Evidence, should be in the written Defence—(G. O. C. C. 22d Oct. 1834)—*Confidential* communications between a Comg. Officer and his Staff should not be brought as Accustions against a Comg. Officer—(G. O. C. C. 25th Oct. 1834)—See *Conversations*.

([20]) In the Case of an Officer on his trial in relation to his Evidence given on a *former* trial, the Evidence given on *such* former trial, with his (Prisoner's) Consent, was read and recorded—the Court being satisfied as to the validity of the former Proceedings (a copy of which had been sent to the J. A.—(G. O. C. C. 26th June 1835.)—The Court in this case ordered the whole of his Evidence to be recorded, to give him an opportunity of referring to it.—This was not necessary—for, as he had agreed to the arrangement, he was entitled to the use of *the Proceedings*.

([21]) *Sir W. Follett* made an objection that what one person said in the absence of another was not Evidence—*Sir J. A. Park* said he would receive the Evidence—the *Witness* "I saw *Green* about (¼ past 10; I was going to Poll) and on going out of the door, *Green* said "Here is Brown, here are the 2 Guineas as *Preston* promised your wife."—The Yarmouth Bribery Cases—Norfolk Circuit, March 1836. The general mistake is this—hearsay Evidence is not legal Evidence *per se*—but it is as introductory to other Evidence, which may come out in Court, and may not be before known—I have the authority of a learned Judge in England for saying so.

([22]) Cir. H. G. 24th Feb. 1830, a copy of which is directed to be given to the President of District and Reglt. Cts.-Ml.

([23]) G. O. Eccles. Dept. 22d June, 1836 (Ext. Lr. C. D. No. 1 of 1836, 10th Feb. 1836.)

Festivals. **Festivals** (Native)—Officers and others to take precautions to prevent Quarrels. ([24])

Finding. **Finding**—The Court may find that the Facts stated in the Charge are proved, but that the Court attach no Criminality to the Prisoner.—(G. O. C. C. 20th May, 1836.)

In the Case of a person charged with *Murder*, if the Court think the Prisoner guilty of *Manslaughter*, they should acquit of Murder, and find guilty of Manslaughter. ([25])

Finding *not* guilty, should add "and is acquitted thereof." ([26])

Forfeiture. **Forfeiture** "of Pay, Addl. Pay—Beer or Liquor-Money for a particular period not specifically included in the Period of Imprisonment, to be considered Addl. to the Imprisonment; and to commence from the termination of such Imprisonment." ([27])

Furlough. **Furlough**—"If a Ship puts back by stress of weather, after Pilot's Certificate of her having proceeded to Sea,—Furlough is not reckoned till day of final departure; or from the day of departure of any other Ship in which the Officer may sail: and full Regt. Allowances passed till such day of final Departure." ([28])

G.

Genl. Ct.-Ml. **General Court-Martial**—The great frequency of trying Crimes by *General, which* are punishable

([24]) G. O. C. C. 24th May, 1828.

([25]) Hawk, P. C. b. 2, c. 47, s. 5, 1 Anderson's Rep. 1834—when the Charge is for striking *in*, the Court may find that the blow was given *out*, of the Mess-Room—(4th Charge)—G. O. C. C. 1st June (K. T. 26th April) 1833.

When the Officer gains *promotion* during the trial, the advanced Rank to be inserted in the Finding, &c.—G. O. C. C. 6th Sept. (K. T. 19th Augt.) 1826.

([26]) G. O. C. C. 2d March (K. T. 31st Jany.) 1826.

([27]) Cir. No. 759, War Office, 31st Oct. 1833.—For *Desertion* see *Desertion*.

Forfeiture, if convicted, whether for *Civil* or *Mily.* Crimes, of Pay and Service from the date of *Commitment*—Cir. No. 759, War Office, 31st Oct. 1833—and from date of *Confinement*—Cir. No. 784, War Office, 12th May 1835.—*Unlimited* Forfeiture of all claims to Pension on Discharge, and of all Addl. Pay *whilst serving* (under Art. 50) in Cases of *Disgraceful* conduct only—(G. O. K. T. in India, 17th Feb. 1832.)

([28]) G. O. V. P. C. No. 186 of 1826, 18th Aug. 1826.

by *District* or *Garrison* or even by *Regtl.* Courts-Martial, much calculated to diminish the awe with which they ought to be contemplated—the practice inconvenient, and detrimental to the Army by occupying on such duties so many Regtl. Officers—Comg. Officers in all Cases where such Courts (Regtl., &c.) are competent to try a Crime, and to award an adequate punishment—to have recourse to such Courts. (*See Art.* 85) (29)—See *Courts-Martial.*

GENERAL SERVICE—though allowed by the 7th Clause of the M. A. and 50th Article of War—is prohibited by a Genl. Order in the *King's* Service (30) —still retained in the Company's M. A. in the Case of *Desertion.* (31) Genl. Service.

H.

HOURS of *Sitting*—Cts.-Martial, Native, may sit the same hours as laid down for the *European* Cts.-Ml. (32) Hours.

I.

IMPRISONMENT not to name the place—should say "In such Place as *the Comr. in Chief*, &c. may appoint, &c." (33)—while in *Hospital* reckons.—Cir. No. 759, War Office, 31st Oct. 1833. Imprisonment.

Second—Sentence of Imprisonment to be reckoned from and after the expiration of the first Sentence.—*Do.*

In a *District* Ct-Ml. the Court are, under Clause 9, of the M. A. and Art. 77, allowed to *name* the place, or to leave it to the Comg. Officer of the Prisoner's Regt. (34)

(29) G. O. C. C. 26th Oct. 1835. (30) G. O. H. G. 25th Jany. 1826. (31) Sect. IX.—4 Geo. 4, c. 81—but I never knew it used.

(32) Lr. No. 516, J. A. G. 5th Oct. 1835.

(33) G. O. C. C. in India, 26th Oct. 1835—and solicits the attention of the Comrs. in Chief at Madras and Bombay—Is productive of inconvenience and at variance with usage—(G. O. C. C. 25th July, 1834.) In *Civil* Crimes the Comr. in Chief has ordered the Imprisonment, in a *Hill Fort.*—(G. O. C. C. 26th May, 1821.)

(34) It would be better *not* to do either—and *not* to name the place —the *Genl.* Officer usually directs the Comg. Officer to confine the Prisoner in such place as may be most convenient—the Court cannot know of the best place—the *Genl.* Officer should give directions as to the place of Confinement, and should always pay attention to the

As to a *District* Court-Martial. (35)

Indictment. INDICTMENT—Where a man commits a *Mily*. and *Non-Mily*. Crime, he should be tried upon distinct Charges—and separate Trials. (36)

Informer. INFORMER—Where three prisoners were acquitted, owing to the disbelief of an Informer's Evidence—the Conviction of a 4th Prisoner by *such* evidence was disapproved.—(G. O. C. C. 13th Oct. 1834.)

Inquests. INQUESTS—Suspected or implicated persons to be instantly secured in Safe Custody (37)—and where suspicion attaches to persons amenable only to the Civil Power, the information recorded must materially assist the Civil Magistrate. (38)—*Inquests* should be signed by the Coroner, and the whole Jury (39)—See p. 173.

Insolvent Court. INSOLVENT COURT—"It is usual for the Insolvent, before discharged, to sign a Bond and Warrant, to confess Judgment to his Assignees, in the penal sum

Comg. Officer's recommendation—but the *Court* should not pass over the *Superior* Authority. Sect. XXIV.—4 Geo. 4, c. 81, (*Company's*) says Genl. or other Courts-Ml., &c. to Sentence "to imprisonment in any Fortress or Garrison, or other suitable place of Safe Custody"—but, this should be altered.

(35) Solitary Imprisonment should not exceed 6 weeks—nor Imprisonment more than 4 months—See Cir. No. 150, A. G. H. M. F. in India, 10th May, 1834—(Cir. H. G. 24th June, 1830.) Imprisonment with Hard Labor—The *Houses* of *Correction* afford more adequate means than the County Jails—For the Guidance of Cts.-Ml. (in England, &c.) in passing Sentence—(*Cir. Memo.* H. G. 14th Augt. 1833.

(36) G. O. C. C. 14th May (King's 21st April) 1835—and see Lr. J. A. G. No. 1311, 25th Sept. 1826.

(37) A Meerut D. O. 24th May, 1828.

(38) Lr. A. G. No. 1363, 19th Aug. 1829.

(39) At a trial at *Nisi Prius*, at York, a Coroner's Inquisition was produced—signed only by the Coroner and the Foreman of the Jury, instead of by all the Jurors—Its reception was objected to on the ground of the informality.—*Mr. Baron Vaughan* decided, that as the Deft. was on the Jury, and it was signed in his presence, it was Evidence as to him in the Case; but that it was not an Inquisition, not being on *parchment*, nor signed by *all* the Jurors: and that if a man had been tried upon it, he must have been acquitted on that ground. (*Leeds' Intelligencer, July*, 1831.)

The Deposition of a Medical Man has been read to a Coroner's Jury, instead of his being examined in their presence.—(Calcutta, 15th April, 1834.)

Sometimes adjourn at the Prisoner's request, to allow him to produce Witnesses—(Ditto, 8th June, 1833.)

The Solicitor Genl. of Ireland attended the Inquest at Castle Pollard—Case of 18 Policemen committed to Jail—(June, 1831.)

of—————Rs. conditioned for the payment of a certain portion of his Pay and Allowances." ([40])

INTEREST claimed by Creditors "or *Promissory Notes*, not bearing Interest on the face of them" ([41])—The Commissioner of Bankruptcy decided that Interest should be paid, as several respectable Mercantile Men had declared that it was a general Custom "that when Bills were dishonored, and afterwards paid, Interest was always added" ([42])—See p. 186. **Interest.**

INTERPRETER—"There should be an Interpreter to a Native Ct.-Martial, or to an European Court where there are Native Witnesses." ([43]) **Interpreter.**

If no Interpreter, the Suptg. Officer (or Adjt. of a Local Corps) may act as such taking the Oath laid down in G. O. G. G. in C. 19th June, 1813. ([44])

([40]) In the following proportions—till his debts be discharged—Income

When under 1,000 Rs. a month........	$\frac{1}{3}$	but only 5 P. C. on debts—unless more were promised—Calcutta Court, 4th June, 1830.
Above .... 1,000 and under 3,000 Rs.	$\frac{1}{2}$	
and over .. 3,000	$\frac{2}{3}$	

The Debts due to a brother (or other relation) must be included in the Schedule.—(Insolvent Deb. Ct. London, 30th Jany. 1833.)

As to *future means*, the Court adjourned to have the Copy of a Will produced, to see if the Insolvent had any interest under it.—(Ditto, 18th Jany. 1833),—Case of Ferdinand Clerk. Where the Insolvent gave up his *Prize Money*, and proved that his necessary expenses were equal to his Pay, &c. no order was made for deductions from his Pay, &c.—left over till his promotion.—(Calcutta Court, 26th Oct. 1833.)

([41]) The representatives opposed the claim—The Commissioner said that Lords Hardwicke and Thurlow held that, when circumstances arose, from which inference could be drawn of any such understanding between the parties, interest should be paid, altho' not expressed upon the Instrument itself."

He became Bankrupt (in 1794) had paid in 1832, 20s. in the pound, and a surplus of 6,700£ was left; as the value of the mortgaged property had improved.

([42]) In re Philips, before Mr. Comssr. Williams, 1st Feb. 1833.

([43]) The oath of the Interpreter is necessary to the legality of the Proceedings.—See p. 29. The absence of an Interpreter, or if no Member or other person were sworn to act as such, would only affect so much of the Evidence as was not in *English*, but in a *Foreign* language. If there were legal Evidence of another kind sufficient to convict, the conviction would be legal; in the same way that the admission of *illegal* Evidence is no bar to the Verdict of a Jury, if the Judge charge them to throw it out of their minds—as a J. A. should do also.—It is clear that if on an European Ct.-Martial no Officer could take upon him the Office (being sworn) the Court must adjourn, for then there are no means of knowing what the Evidence is, and of course there can be no legal investigation.

([44]) See p. 29.

A *Native* who can speak and understand *English* has been an Interpreter at an *European* Genl. Ct.-Ml. ([45])

If the Interpreter, of the Regt. be sick, another Officer should be appointed to act—or an Interpreter from some other Corps.

Invalids.

INVALIDS (*European*) Serjts. and Soldiers attached to Companies, are amenable to trial by Court-Martial ([46])—and so are *Native* Soldiers, &c. ([47])

INVALIDS (*Pensioners*)—are under Mily. Control as far as concerns the payment of their Stipends, and in other respects as *Residents* within the Garrison, tho' no longer Soldiers; they are amenable to the Local Rules and Regns. of the Garrison. ([48])

J.

Judge Advte.

JUDGE ADVOCATE should point out Errors to a Court.—(G. O. C. C. 31st Decr. 1829.)

The Court should protect him from the use of improper language.—(G. O. C. C. 25th Oct. 1834., Responsible that *previous Convictions* are not made known till after the finding guilty.—(G. O. C. C. 31st Oct. 1835.)

Where an Officer after his trial wrote to *J. A.* doubting, if on the last day he was in Court, there were the legal number of Members present, tho' the Officer had the means of counting the number himself; he received a severe Reprimand.—(Lr. A. G. No. 2311 —14th August, 1828 ([49])

Of *Divisions* should not be required to attend *Cts. of Inquiry* on trifling matters and disputes between Officers, or on the common disputes at the Station. In serious and important Cases, the *Genl.* Officer may deem it necessary to require his assistance.—(Lr. J. A. G. 8th Feb. 1819.)

([45]) Lieut. Col. Bell's trial (Madras) 1st Nov. 1809 — *Choka Lingum* was.

([46]) G. O. P. C. C. 24th June, 1834. ([47]) G. O. C. C. 12th Feb. 1821.

([48]) Lr. A. G. No. 315,—1st Feb. 1818.

([49]) The J. A. procured the signature of all who were present, and sent the list to the J. A. G.

May *frank* Letters to each other, and to Comg. Officers of Stations, Regts., and Detts., within their own Division.—(Genl. Post Office, 3d Nov. 1829.)

In the Case of *distant Witnesses*—"In all Cases where a Witness may be employed in important public duties, or being at a distance, or from any other *impediment*, the J. A. is to inquire the nature of the evidence required. In Cases were Deft. refuses to disclose the nature of his proposed examination of a Witness, whose attendance cannot be obtained without great inconvenience to the State and injury to the individual, the expence must attach to Deft.; but, on satisfying Govt., after trial, that the attendance was essentially necessary to his cause, Govt. will take into consideration the reimbursement of the expense. (50)

In Cases of Witnesses *non-Mily.* the J. A. certifies that they were examined for the Prosecution or on the Defence. (51)

If a J. A. propose any *Evidence* or course of *procedure* for the Crown, &c., and the Court overrule it, he should enter a minute on the subject matter proposed.

If he is not allowed to prosecute, the Court should grant leave to adjourn. (52)

(50) "When the Witness is situated as above described, and the Deft. discloses the nature of the Evidence required, the J. A. shall propose to the party for trial, an examination *de bene esse* (See *Depositions*) that is, interrogatories by the party, to the parties transmitted to, and the answers taken before a Justice of the Peace (the *Comg. Officer* of a Station may, now, under Act IX. of 1836 of the Govt. of India in C.) "In the event of difficulties, as above described, existing to the *detention* of a Witness, the J. A. shall propose the Evidence required being taken in presence of *both* parties before a Magistrate (or Comg. *Officer*); and it is understood, that the *necessity* of the above Cases being established, and the Court-Ml. being satisfied, that the *consent* of both parties had been obtained, such Evidence may be legally received on the trial." (Cir. No. 2485, J. A. G. 22d Nov. 1830, *by order of Govt.*)—See *Depositions* and Note 17, p. 126.

(51) A. G.'s Letter, No. 672, 5th April 1830. They are Summoned by the J. A. on application to the Civil Magistrate—or Resident, &c.—the Civil authority, &c. makes out the Bill, which is sent to the J. A. and by him to the A. G. for signature—passed by order of the Comr. in Chief, and sent to Govt., returned, and sent to M. A. G. with authority to pass it. (*Do.*)

(52) There may be a legal necessity for a proposed course, and if the Court stopt him, and the trial proceeded, the error could not be remedied on a Revision—and the cause of Justice would suffer.—If the Court distrust their *law* adviser in such Cases, the least they can do

Judge Advte. If a *question* be overruled it should still be recorded, for the information of the Comr. in Chief, &c.

J. A. some times ordered to conduct the Proceedings of a *special* Ct. of *Inquiry.* ([53])

J. A. to give a Certified Copy of the Sentence of Native Soldiers, &c. ordered to be made over to the Civil Power. ([54])

J. A. should be consulted by inferior Courts, in any legal points or doubts. ([55])

J. A. "if a Crime be of a *general* nature, and not an injury to an *individual*, to call on the person preferring the Charge to appear as Prosecutor, and is to submit the expediency, *generally*, of the Officer Comg. the Regt. or Dept. to which the Prisoner may belong, being required to sustain the prosecution." ([56])

is, to do him and the Govt. the justice of directing a reference. When a Genl. Ct.-Ml. has opposed the opinion of the J. A. they have stayed the Proceedings pending a reference.—(McArthur, vol. 2, p. 372.)

([53]) Lr. No. 114, Adj. Genl. 16th Jany. 1817 and 31st Jany. 1823.

([54]) G. O. G. G. in C. 19th Augt. 1820.

([55]) G. O. C. C. 25th July, 1836—See *Previous Convictions.*

([56]) Circular J. A. G. No. 178, 15th June 1832. I have at p. 126 urged objections to this course. On the Trial of Lt.-Genl. Whitelocke, the J. A. G. (the Hon. Mr. Ryder) stated "From the Conduct of the Prosecution devolving upon me, who, of course, must be completely unacquainted with the nature of Mily. operations; who had no means of knowing, previously, what the facts were which each Witness could prove."—*Printed Trial*, p. 794, and G. O. H. G. 24th March, 1808, at Home the J. A. G. is not a Mily. Man.

On the Trial of Col. Quentin, 10th Hussars, G. O. H. G. 10th Nov. 1814—Col. Palmer was the Prosecutor—J. A. G. (Rt. Hon. C. M. Sutton) at p. 34, of the printed Trial remarked, "It will be seen by the Articles of War, that the J. A. G. is made the Prosecutor for the Crown on these occasions: it will be obvious to every Mily. Man, that there can be no duty so inconvenient to the J. A. G. as the duty of making a Reply. He is to report to the Crown: it is therefore desirable that he should not become a party, by advocating any particular side; otherwise there would be very great doubt as to the correctness of the *Report* he should make: with that view, it has always been the practice, since I have been in office, and with my predecessors (unless there was some reason why it could not be so managed) that somebody should be appointed Prosecutor."

On the Trial of Lt.-Genl. Sir J. Murray—(G. O. H. G. 17th Feb. 1815)—F. S. Larpent, Esqr. was D. J. A. and prosecuted on the 1st and 2d Charges—and Rear Adml. Hallowell, on the 3d Charge.

Remarks.—The objections stated by me at p. 126 related chiefly to a Comg. Officer of a Regt. being the Prosecutor on the trial of an Officer or Soldier of his Corps, for any breach of Mily. discipline, or orders—as well as, more especially, in the Case of an Officer complaining of a *private* injury, &c. The three above quoted Cases were Trials regarding Mily. Operations—the J. A. on those Trials were all

The Prosecutor must be a *Mily.* Person. In "Cases of a *Non-Mily.* person being the *Complainant,* he becomes the principal Witness, and after giving his Evidence should be allowed to remain in Court, that the J. A. may refer to him" (57)—nor can such person make a *Reply* to the Defence. Judge Advte.

J. A. not permitted to furnish to Prisoners who have been tried, Copies of the original Minutes of the Proceedings; such being official and closed, admitting of no access; and transferable only to the J. A. G.'s Office.

Office Copies of Proceedings of all Cts.-Martial and Courts of Inquiry to be carefully preserved; and a Register to be made of them, and a Copy annually sent to the J. A. G. at the commencement of each year. (58)

J. A. to leave space between the Sentence and Adjournment, for the Approval, &c. of the Comr. in Chief. (59)

J. A. to take great care to frame Charges for Non-Mily. Offences with precision and conciseness. (60)

Civilians (Lawyers), and, as such, must have labored under great difficulty in conducting them.

The J. A. G. as is above shown had to submit to the King the Procgs. he had conducted. The Dy. J. A. G. conduct the trials in India (the J. A. G. in Special Cases, as in England.) They are *all* Mily. Men—so the difficulty is obviated. On the trial of the late Lt.-Col. Brereton in 1831—*H. G. Sir C. Dalbiac*—who had been President of the Ct. of Inquiry—was President of the Gl. Ct.-Ml. to try Lt.-Col. B—— and Capt. Warrington—(*Bristol Riots*)—which proves the necessity for a Mily. Officer being the Prosecutor.

A *Mily. J. A.* can more easily, as the Lawyers call it, get up a Case which regards Mily. Operations. If required, an Officer who served on the Expedition, may be made joint-prosecutor—but, every J. A. ought, from his reading and research, to be able to conduct it himself, while the President and Members are, or ought to be, in such Cases, *experienced* Officers—Besides the Horse Guards would never countenance the position, that the J. A. G. makes any but a *legal* Report on the Case: as the Comr. in Chief, himself, is the Judge on *Mily.* points. Even in Cases of trials for *Murder, &c.* we do not find the Mily. J. A. incompetent to conduct such Cases.

But, lowering the scale of responsibility to the Case of one Officer prosecuting another, for ungentlemanlike-conduct; surely the *J. A.* ought to be presumed to be more impartial than the *private* prosecutor—and if he is not, the Court should interfere, where there is no *legal* bearing in his mode of proceeding.

(57) G. O. C. C. 26th July, 1827.

(58) Cir. No. 152, J. A. G. 10th May, 1834 (G. O. C. C. 27th June 1811.)

(59) Cir. No. 499—J. A. G. 21st Oct. 1834.

(60) Lr. O. J. A. G. No. 284—6th June, 1835.

Judge Advte. Not necessary to insert the words of G. O., D. O., S. O., R. O., &c. directing the Assembly of the Court —nor record that "the Charge was read to Witness" —or that "his Evidence having been read over, he acknowledges it to be correct"—or "there being no further questions, &c." It is sufficient to record that "the Witness retires." (¹)

Weekly Report—To report, weekly, on the trial of European or Native Comssd. Officers—in a few words, the progress of Proceedings. To begin a week before the Court is expected to assemble. If extraordinary delay in arrival of Parties or Witnesses, or other circumstances occasioning a postponement, to be reported. (²)

No Letter required *in transmitting* Proceedings to J. A. G. nor acknowledgment from him. If on any occasion required, *J. A.* to send a Receipt for signature, and will be returned by J. A. G.

No acknowledgment of *Circulars* required. (³) The Court to be sworn afresh on each new Trial, and Proceedings made up separately. (⁴)

J. A. Sick—Where a J. A. is sick he must furnish a Medical Certificate (⁵)—and where he was unable to write, an Officer has been allowed as an *Amanuensis* (⁶) to sit by him to write. (⁷)

A Member of the previous Ct. of Inquiry has been the J. A. at the trial. (⁸)

J. A. "should not deliver an opinion on the *Credibility* of Evidence, or on the Guilt or Innocence of the Prisoner." (⁹)

"His duty to bring forward every circumstance which tends to criminate, and equally incumbent on

(1) Lr. O. J. A. G. No. 476, 12th Sept. 1835.
(2) Lr. J. A. G. No. 504, 26th Sept. 1835.
(3) Do. No. 100, 3rd May, 1836.
(4) G. O. H. G. 16th Jany. 1810.
(5) Which should be sent to the President—If of any continuance, it should be reported to the Division, or Station Staff.
(6) Who should be sworn, as he may have to remain in *closed* Court—See *Clerk* to J. A.
(7) G. O. C. C. 5th Augt. 1820. I have known a Sentence in the writing of a President.
(8) G. O. C. C. 5th June 1832—*M. G. Sir C. Dalbiac*, President of the Ct.-Inquiry, was *Prosecutor* at the Genl. Ct.-Ml. (*Bristol Riots*) Nov. 1831.
(9) P. 256. M. S. J. A. G. O.

him to call forth every one which can assist the Prisoner. The J. A. is not a party, and ought to be strictly impartial." (10)—See *Prosecutor—Reply—Warrant.*

Jurisdiction. JURISDICTION—"In the Case of a Crime committed *in* a Mily. Cantonment by a Native Soldier *before* his discharge—he is amenable to trial by a General or Station Court-Martial, and might be seized at any place, or at any distance *out* of it. If a subject of a neighbouring *Foreign* State commits the Act, in a Cantonment *out* of the Provinces, and is seized *therein* by its Officers; the Comg. Officer might, with propriety, demand his Surrender if he escapes; through the Political Agent." (11)—See *Courts of Requests, &c.*

K.

King's Soldiers. KING'S N. C. O. and Soldiers tried without reference to Head Quarters—to report and send Copy of the Charges (12) sent to King's Adjt. Genl. (13)

Soldiers reckon, as *Service*, no period for which they are not entitled to *pay* under the Mutiny Act (14)—nor while in confinement, as no pay is received. (15)

May be confined by the Regns. of H. M.'s Service in a Congee House or Solitary Cells 48 hours without trial; or longer if preparatory to trial. (16)

L.

Ladies. LADIES have on several occasions been spectators at Genl. Cts.-Martial (Mily. and Naval. (17)

Letters. LETTER from an Officer read in Defence—not admitted as Evidence, as the Officer had been at the Station and could have been examined in regard to the fact stated. (18)

"Where an Officer wrote and published a letter in a newspaper, signing his name, containing false and

(10) P. 40. M. S. J. A. G. O.
(11) Lr. Mily. Secy. Govt. 11th Decr. 1823.
(12) Sent to A. or A. D. A. G.
(13) Lr. A. G. H. M. F. in I. 12th Oct. 1833.
(14) Warrant as to Pensions of Soldiers 7th Feb. 1833.
(15) Cir. No. 759, War Office, 31st Oct. 1833.
(16) Cir. H. G. 24th June, 1830.
(17) Trial of Capt. Pigott, R. N., at Sheerness, May, 1834.
(18) G. O. C. C. 26th June, 1835.

unwarrantable imputations, deeply injurions and disgraceful to the character of his former Comg. Officer, and that of another Officer of his own Regt., he was charged with scandalous and infamous conduct, unbecoming the character of an Officer and Gentleman; but acquitted; ([19]) as there was no proof of the publication by him.—See *Annonymous Letters—Correspondence—Depositions—Evidence.*

Limitation. LIMITATION—*Statute of*—Where a Deft. gave a written Agreement to pay a bill, and pleaded the Statute—had resided for years in *France*, and so could not be sued in *England*—a Verdict was found for Pltff. ([20]) —See Cts. Requests, p. 182, *Debts.*

Line of March. LINE OF MARCH—"All Mily. Offences are appointed to be summarily heard and determined at a Ct.-Martial, which order takes place, especially in Cases of Crimes, when, if one be taken in the *very fact*, he is immediately to be sentenced, and the Sentence straightway put into Execution. So that it is a received custom, beyond sea, that such as are condemned to die, are presently hanged upon a Tree." ([21])

M.

Manslaughter MANSLAUGHTER—In aggravated Cases a sentence of Transportation for Life has been passed. ([22])

Medal. MEDAL—See *Discharge, Soldiers.*

Medl. Officer. MEDICAL OFFICER—The Order of Govt.—(19*th July*, 1822,) does not comprehend the Case where a Medical Officer attends a brother Officer of *another*

([19]) G. O. C C. 23d Oct. 1835; but was tried (*G. O. C. C.* 31*st Decr.* 1835) "for being officially aware of the publication of the letter with his name, and for allowing the said letter to continue to appear before the Army and the public as written by him" and lost a step of Regtl. Rank—See *Character—Private Letters*—Adml. Keppell wished to call on a Lord of the Admiralty to exhibit and prove certain Letters received by him from him (Adm. K.)—the Court agreed that "they could not take cognizance, in point of Evidence, of any matters contained in letters of *private* Correspondence."—P. 220, MS. J. A. G. O. but see *Conversations.*

([20]) Mackenzie v. Bunbury, K. B. before L. J. C. 19th Feb. 1833.

([21]) Bruce's Inst. Mily. Law, p. 314—A. D. 1717—p. 395. M. S. J. A. G. O.

([22]) G. O. C. C. 23d Augt. 1833, under Sect. LVII. of 9 Geo. 4, c. 74—or for any term not less than 7 years—or Imprisonment not exceeding 4 years.

Corps, that Corps having its Medical Officer present. Officers no right to call upon a Medical Officer of another Corps—latter would be justified in declining to attend. The *Custom* of this Service, like all other Mily. Services, has opposed the *Demand* of a *Fee* from a brother Officer. ([23])

MEMBERS (Ct.-Ml.)—if *new* are appointed during a trial the Court must commence with the trial *de novo*. ([24]) Members.

A Member (as well as a Juror,) may be sworn to give Evidence in a Cause, to a Court and his fellow Jurors." ([25]) X

Should not trust to the opinion of other Members, but in doubtful Cases apply to the J. A. of the Division. ([26]) —See *previous Convictions*.

Members reduced to an even number, one is not to withdraw. ([27])

A Sick Member having retired cannot resume his seat and have the Evidence taken in his absence read over. ([28])

([23]) G. O. C. C. 4th Nov. 1830.

([24]) 16th Dec. 1829. The King refused to confirm a Sentence where the Evidence had only been *read* to the *new* Member. Genl. Ct.-Ml. in 1781—p. 11 and 289 M. S. J. A. G. O. It appears from *Bracton* that in 1260 (about 80 years after the first Institution of Juries by Henry 2d) if the Jury did not all agree, they added as many new Members as there were in the Majority who agreed in one opinion, by the addn. at least of 4 or 6 new Members. *Stat. Tri. vol.* 14, p. 618. *Mr. Barrington* says "and as it was probably found, when *new Jurors* were added, that it was in reality the *trouble of trying the cause over a second time*, and so *toties quoties*; at last, for the greater dispatch of business, they insisted in all Cases upon the unanimity of a Jury." p. 619.

([25]) Ste. Tri. vol. 6. p. 1012 (Note) the late *Mr. Jus. Buller* said "that when a jury-man has knowledge of any matter of Evidence in a cause which he is trying, he ought not to impart the same *privily* to the rest of the jury, but should state to the *Court* that he had such knowledge, and thereupon be examined, and subjected to cross-examination, as a Witness." Vol. 18, p. 1012 Note. But when *material* Evidence had been given by 2 Commissioners appointed to try the Regicides (1660) they did not resume their seat—vol. 5, p. 1181 X

([26]) G. O. C. C. 25th July 1836.

([27]) G. O. C. C. 12th Augt. and 23d Augt. (K. T. 20th) 1821—this requires a Regn. to be made to provide for the Case.

([28]) G. O. C. C. (Madras) 6th March, 1812—and where a Member had been absent during one sitting (Prosecution having been closed), though the Prosecutor and Prisoner assented to his return and have the Evidence taken in his absence read over to him—the Court refused, grounded on the above case.—G. O. C. C. 3d Dec. (K. T. 29th Nov.) 1822.

Member if objected to, withdraws whilst the Court is deliberating on such objection. ([29])

Navy Rule—No Member shall absent himself from the said Court-Martial during the whole course of Trial, upon pain of being cashiered from H. M. S. except in Case of Sickness, or other extraordinary or indispensable occasion to be judged of by the Court." ([30]) —See *Court-Martial.*

" *Comg. Officers* of Corps or Stations are to be selected for detached duties, only in Cases of emergency, to be explained at the time to the satisfaction of Govt." ([31])

" Officers who are Members of Genl. or other Courts-Martial assembled at the Station where their Regts. are quartered, shall, during the Adjournment of such Courts, when the period of adjournment exceeds one day, discharge their Regtl. Duties." ([32])

Memorial. MEMORIAL from a King's Soldier (at an Inspection) as to a pecuniary claim, ordered to be submitted before a Regtl. Court-Martial. If not satisfied, to appeal to a Genl. Ct.-Ml. ([33])—See p. 17, Note 44, and see *Correspondence*.

Mess. MESS—The Allowance to be drawn by the Adjt. of the Corps, for every Month in which the Mess *shall have been conducted*, on the Comg. Officer's Certificate that the Mess has been maintained, during the Month of ——— ([34])—keeping up a Flock of Sheep, &c. there being no Tent, Furniture, Servants, &c. and the Officers not dining together, is not a Mess according to the meaning or intention of Govt. ([35])

([29]) p. 93, M. S. J. A. G. O.

([30]) Clause of amendment in Act 19 Geo. 3, c. 17—*McArthur*, vol. 1, 350, 420. Those in excess to the legal number might withdraw – If any Service required more, there must be a *new* Court formed; but it would be necessary to legislate for such a Case, as *Death* or *Sickness* alone allow of a new Jury being formed

([31]) G. O. C. C. 2d July, 1836. This Order seems to be meant to apply to Ct.-Ml., and that when a Field Officer is required, the 2nd in Comd. should rather be sent, as the Command Allowance is thus not paid to 2 Officers.

([32]) G. O. C. C. 19th Jany. 1836.

([33]) Lr. A. G. H. M. F. in I. 23d Decr. 1834.

([34]) G. O. G. G. in C. 8th May, 1806.

([35]) G. O. C. C. 30th April, 1836.

MONEY—Officers prohibited from borrowing from a N. C. O. (36) Money.

Not to be lent, on interest, by Native Soldiers to their Comrades—may lend to persons out of their Corps. (37)

On Trial for an overcharge made to Govt.—the Court merely record in their finding the Amt. overcharged. (38)

MURDER—The Charge should be simple—" A. B. (Number and Company) Private of H. M.'s — Regt. placed in confinement, and charged as follows. Murder.

" With having, at———, on the —— day of —— 183—, feloniously, wilfully, and of Malice aforethought Murdered C. D. (Number, &c.) Private of the same Regt. by discharging at him a Musket loaded with Powder and Ball, &c. and thereby inflicting a Mortal wound in his right side, of which he, C. D. immediately died," (to be varied according to the circumstances attending the Death. (39)

MUSICIANS—*(Apprentices)* tho' not inlisted Soldiers, may be tried as Camp-followers. (40) Musicians.

MUTINY.—Not, at present, punishable by Transportation in the Company's Army. (41) Mutiny.

N.

NATIVE CHRISTIANS.—See *Corporal Punishment* and *Sentence*. Native Christians.

NATIVES, INTESTATE.—Not belonging to the Army, dying within the precincts of a Mily. Cantonment are by Regt. No. 3, of 1803, Sect. 16—Cases within the Civil Jurisdiction—Charge of Estates of all Travellers and Shopkeepers, &c. is vested in the Judge. (42) Natives, Intestate.

(36) G. O. C. C. 21st Decr. 1820, and see G. O. C. C. 6th July, 1832.

(37) G. O. C. C. 1st Feb. 1821.

(38) G. O. C. C. 29th Sept. 1835.

(39) Cir. J. A. G. No. 117, 16th May, 1836. A Native Officer was tried and dismissed the Service, for not reporting a Murder committed by a Sepoy in his Regt., though he knew the name of the accused shortly after the Murder—and Several Witnesses, N. C. O. and Sepoys who had concealed their knowledge of the fact were discharged the service without trial.—G. O. C. C. 19th July 1831.

(40) Lr. No. 256, A. G. 5th Dec. 1833.

(41) Lr. No. 403—O. J. A. G. 12th August 1835.

(42) Cir. No. 1985—A. G, 25th Oct. 1834.

Newspapers. NEWSPAPERS—Writing in—See *Character*.

Non-Comssd. Officers. NON-COMMISSIONED OFFICERS must be supported in the execution of their duty. (43)

Arrest of proper and usual in minor Cases. (44)

May be reduced, without trial, by the *Colonel* of the Regt. (45); the same in the Company's Army. N. C. O. should not be reproved before the men, unless for the sake of example it is required to be public —when admonition has failed to produce a proper effect. Nor should *they* speak improperly to Soldiers. Nor should N. C. O. be allowed to escape punishment by Court Martial, by being allowed to resign—a practice extremely objectionable—and never sanctioned by competent authority, (46) such should not be the practice in the Company's Army.

O.

Oath. OATH—*See Roman Catholics*—and see *Witnesses*, p. 22.

Offences. OFFENCES of a Mily. and Non-Mily. nature should not be tried under the same Charge. (47)

Officers. OFFICERS responsible for the Money under their Pay Serjeants. (48)

Officers (*Insane*)—European N. C. O. of good character, and steady men, to accompany and remain in the same boat—on all ordinary occasions. In case of a near relative, or intimate friend, being on the spot, and if strongly recommended by the Medical Officer for the charge; may be appointed without any addl. Expense to Govt. (49)

Officers censured for endeavouring to write down the characters of others in the public newspapers—and making exparte statements to the Public, and affording topics for common conversation. (50)

(43) G. O. C. C. 23d Decr. 1820.
(44) G. O. C. C. 23d Sept. 1826.
(45) G. O. H. G. 27th Decr. 1826.
(46) Cir. H. G. 24th June, 1830.
(47) G. O. C. C. 14th May, 1835.
(48) G. O. C. C. 28th Decr. 1827.
(49) Cir. A. G. No. 2293—10th Decr. 1834.
(50) G. O. C. C. 6th Jany. 1836.

Officers (*suspended*) are amenable to trial. (51)

Comg. Officer should inform any Officer under his Command of the existence of any Reports injurious against him, affecting his Character or Reputation; instead of circulating such Reports, and making them public. (52)—See *Character—Signature.*

Official Documents. OFFICIAL DOCUMENTS—The ink to be dark—the hand-writing legible—written 3 lines to an inch—to be returned if the directions are not complied with. (53)

Rolls containing names indistinctly written will be returned. (54)

Ordeals. ORDEALS by means of Chewing Rice, or by any other means, are prohibited in the Courts of Justice from being used to extort evidence from Native Witnesses. (55)

Orders. ORDERS—Native Officers should not be allowed to be ignorant of the Standing Orders for the Native Infy., &c.—particularly as to those (Sect. 20)—relating to the duties of Guards and Sentries. (56)

Issued by the Comg. Officer of Station (censuring an Officer without due inquiry) have been directed to be *expunged* from the Order Books of the Station, and of Regts. (57)—See *Treasure.*

Original Proceedings. ORIGINAL PROCEEDINGS—Of inferior Cts.-Martial and of Cts. of Inquiry to be sent to Hd. Qrs. in Cases of a reference, and will be returned (58)—and

(51) G. O. C. C. 31st Decr. 1835.

(52) G. O. C. C. 25th April, 1834.

(53) G. O. C. C. 20th Nov. 1834.

(54) Cir. A. G. 1035—8th June 1835.

(55) Regn. L. of 1803—though they are used among the Natives of India to try to discover who is the Guilty person—A Man conscious of his *Guilt* may, through fear, confess his Crime—but, even the *innocent* may from sickness, or agitation of mind when accused, be unable to undergo the test and may return the rice quite dry from his mouth —(the presumed proof of Guilt,) and as it has been prohibited by Govt. as the means of obtaining Evidence *in* Court, it should not be resorted to *out* of Court—if there is any intention to try the person, *merely* upon such uncertain grounds for accusation.

(56) G. O. C. C. 18th June 1836.

(57) G. O. C. C. 20th July, 1827.

(58) G. O. C. C. 3d Augt. 1818.

sent thro' Genl. Officers, &c. Comg. Divisions, &c. (59) —And of all Station and Regtl. Courts-Ml. to the J. A. of the Division. (60)

P.

Pardon. PARDON—(An Officer *Cashiered.*)—The Genl. Comg. in Chief was pleased to recommend to H. M. to extend his gracious *Pardon* to an Officer so far, as to restore him to the Service for the purpose of realizing the value of his Commission. (1)—See *Plea.*

Passage Money. PASSAGE MONEY—Officers *Dismissed*—the Ct. Drs. will not object to allow, if taken within 6 Months. (2)

Pay. PAY, *Forfeiture* of, in excess to 6*d.* a Day between time of passing Sentence and promulgation—*Compensation* allowed for tear and wear of Regtl. Necessaries 1 rupee 4 annas per mensem—(not in Money) to repair or replace them. (3)

Pension. PENSION—See *Forfeiture.*

Perjury. PERJURY—Witnesses guilty of Perjury or of gross Prevarication, to imprison Soldiers and report—but no summary Procedure. (4)

Plea. PLEA—(If Guilty)—The Court to receive and report in their Proceedings, such Evidence as may afford a full knowledge of the Circumstances; it being essential that the facts and particulars should be known to those who have to report on the Case, or approve of the Sentence. (5)

Where an Officer declined to plead as there was no specification as to *Dates*—the Court ordered the

(59) G. O. C. C. 6th Nov. 1818.

(60) *Do.* within one Week after approval—but, if in Cases requiring approval of Sentence before carried into execution, to be sent immediately—(District Ct.-Ml. also) to the J. A.; if absent, to the Genl. &c. Officer Comg.—*King's* Regtl. Court-Martial are not sent—(G. O. C. C. 26th Oct. 1822)—a return being furnished Half Yearly at Inspections.

(1) G. O. K. T. in I. No. 637—27th May, 1832.

(2) Lr. C. D. 16th Decr. 1835, to Govt. of India para. 10 under the new Charter, return to England, &c. optional. The sum from Bombay to England 868 Rs.

(3) Lr. No. 42—Secy. Govt. Mily. Dept. 2d Decr. 1834.

(4) Lr. J. A. G. No. 543 (A) 12th Decr. 1822.

(5) Genl. Regns. and Ors. p. 202.

dates to be inserted, and the Prosecutor submitted an amended Charge. (6)

Where an Officer pleaded a *Pardon* in *bar* of *trial* on Charges by his Comg. Officer, on the ground "that the Prosecutor had *pardoned* all former Offences"—the Court over-ruled the objection; as the *King's Pardon*, was different from the Adjustment and Release of a *private* party. At Suit of the King, no intermediate party can release. (7)

Where a Prisoner urged a Plea of *Insanity*, Medical Men under whose charge he had been, have been examined (8)—See p. 125, Note 15—Plea as to Charges improperly signed.

PRESIDENT—Can be changed, by the Officer ordering the Ct.-Martial, for a *new* Trial—but Sentence on the *old* Trial could not be *revised* unless he returned to his place. The death of President, or of any Member, if reduced below the legal number, new Court and Trial may take place. If not reduced by the death of the *President* below the legal number, *his* place may be taken by the next Senior Officer on the Court, and the trial may proceed. (9) President.

Of *Districts* and inferior Cts.-Martial, if there be any difficulty on points of Law, &c. should consult the *J. A.* of the Division. (10)—See *previous Convictions.*

PRISONER — In Cases of *mental derangement*— should ascertain the fact by examining Medical and other Witnesses, and *Court* should record their opinion; and abstain from passing any Sentence. (11) Prisoner.

J. A., &c. to ask Prisoners for a list of their Witnesses, that they may be duly summoned. (12)

(6) G. O. C. C. 3d Decr. (K. T. 29th Nov.) 1822.

(7) *Do.* the Officer quoted the Cases of Capts. Cameron and Ray in 1798.

(8) G. O. C. C. 22d June, 1829.

(9) Lr. J. A. G. 4th May, 1816—(concurred in by the Advt. Genl.) If the President who signed the Procgs. were absent, there could be no *revision*.

(10) G. O. C. C. 25th July, 1836.

(11) G. O. C. C. 28th Nov. 1822.—" Prisoners apt to *affect* Madness or Imbecility of mind—Court should not trust to their own observation, but should require the best Evidence it can procure, of the general state of Intellect of the Prisoner.—Lr. from Comr. in Chief 11th Sept. 1832.

(12) G. O. C. C. 23d Sept. 1826.

Prisoners' *Subsistence* paid by the Govt. (by the Commissariat) in all Cases, unless Debtors imprisoned in Cases of Debt (Ct. Requests). (13)

Irons of Prisoners must be taken off when pleading or under trial; unless danger of *Escape* or *Rescue* be apprehended. (14)

Prisoner if *Sick* to send a Medical Certificate daily. (15)

A Soldier has been ordered to be tried at a Station, not in the Division to which his Regt. belonged. (16)

Prize Money. PRIZE MONEY OR BOOTY—Action by a Claimant —Deft. neglecting to rate Pltff. as Qr. Master, by which neglect he was excluded from sharing Prize Money, in the proper proportion — *Verdict* 500£ damages. (17)

Compensation—The Duke of Wellington, in June 1822—transmitted a Memorial on behalf of the Army in the Peninsula during the years 1812 to 1814, and submitted to the consideration of Parliament, the Claim of the Army upon the Country and favor of the Legislature, for *Compensation* in lieu of the *Property* and Stores which had been captured by them. To this Memorial a *Schedule* was annexed, by which the estimated value of such Captures appeared to be 916,450£. *Parliament* granted to the *Army* 800,000£; and allotted to the *Navy* as a "Grant for Naval Prize," 116,450£. (18)

(13) The Subsistence of Prisoners, in Criminal Cases, is usually 1¼ Ana a day.—In the Patna Jail only 2 Pice a day are allowed—and the sum for *Mily.* Prisoners should be regulated according to the payment in the Civil Jails—It was ascertained that a man could live on 2 Pice—and as he got 6, he could save 3 or 4 Pice a day, and live without labor (if not put on the Roads)—hence the reduction was ordered—to reduce prison-idleness.

(14) *Hale's* H. P. C. c. 28—"Nor with his hands tied together, nor with fetters on his feet (*Bracton*, b. 3, p. 137) unless, &c." p. 97—MS. J. A. G. O.

(15) G. O. C. C. 16th Oct. 1821.

(16) Lr. No. 2068, A. G. H. M. F. in I. 1st July 1828—from Ghazeepoor (Benares Divn.) to Dinapoor (Dinapoor Do.) The Warrant of the Genl. Officer of the Benares Division could not operate, not extending *beyond* his Division, the order from the Comr. in Chief was necessary.

(17) Before Ld. C. J. Mansfield—*Chas. Darby*, Pltff v. the Capt. of the Hermione Frigate, 5th June, 1764. Annl. Regr. vol. 7, p. 79.

(18) "By the 46th, 55th and 57th Geo. 3—all *Proceeds* of Prizes, and all *Grants* of Money allotted for *Naval* Prize, are rendered liable to a *P. C.* of 5£, payable to *Greenwich Hospital*, in aid of the Funds

Proceedings—(*Publication of*)—The Comr. in Chief has severely censured the *length* of Procgs. ([19]) Proceedings.

Proceedings—when the Sentence is signed—and the Court adjourned *sine die*—it cannot meet by its own Authority, to alter the Proceedings ([20])—See *Court-Martial, J. A.—Plea—President—Prisoner—Witnesses.*

Property, loss of, of Native Troops proceeding by *Water*. ([21]) Property.

Found on a Prisoner may be restored to the Owner after trial, on application to the *Civil* or *Mily*. Authorities as the case may be. ([22]) ✗

of the Institution. The Agent of Lord Keith and other *Naval* Officers who were successively employed on the N. Coast of Spain, in conjunction with the *Guerillas*, conceived the present grant to be one of *Naval* Prize. In the Capture of *Genoa* it was decided that a *Conjunct* Expedition of *Sea* and *Land* forces, did not come within Limits of these Grants on which the *P. Centage* was payable."

"It was imaginable that the present case being one of *continued co-operation* between the Army and Navy, particularly at *St. Sebastian*, was also in the nature of a conjunct Expedition—and a *Monition* was granted against *Greenwich Hospital* calling upon it to show Cause, why its Treasurer should not refund such Amt. (it had been paid.")

"*Decision*"—Lord Stowell held, that the present Case did not come within the meaning of conjunct Expeditions; and that the P. Centage had not been paid in Error." (High Ct. of Admiralty, 14th May, 1822—Annl. Regr. vol. 64, p. 86, *Chron.*)

Remarks—A Prize Act for *the Army of* India is much wanted—and some Rules, so as to enable the Army to obtain it expeditiously, and without any reference to a Court of Laws are required—40,000£ it is said were expended in deciding on the right to Claims. The question was whether the Bengal Army should share, and as to constructive Capture. In the *Peninsula* (I was informed by Lord Combermere that) all who joined even the Hospital Depôt during a Campaign, shared in Captures made during such Campaign.

The Army should appoint their own Agents and Trustees—and instead of 2 there should be 5 Agents—the better to look after property, &c. the percentage should be 5 P. C. (10 P. C. was given for Money found, in the Fort of Chandah in the Mahrattah War 1817-18) on sums not exceeding 100,000£—and less if beyond that sum; for Money found 5 P. C. on the same scale.

All our Prize Acts relate to the payment if unclaimed dividends—the Chelsea Hospital is considered more than the Army in these Acts—the *Chinsurah* Prize Money was finally paid in 30 years—and the Mahrattah Prize Money of 1817-18 in 17 years.

([19]) G. O. C. C. 11th April, 1827.

([20]) G. O. C. C. 12th July, 1832. By no order, except by the approving authority (the Comr. in Chief, &c.)

([21]) Cir. Lr. A. G. No 1026, 11th July, 1831.

([22]) Lr. J. A. G. No. 1120, 27th Oct. 1825, as under Sect. CX. if he prosecutes to conviction.

Prosecutor.

Prosecutor—If appointed, should be, by the Convening Authority, and not by the Court—should be first examined, if he has any evidence to give—and not first to hear the evidence of his Witnesses. ([23])

The Court should not refuse the Prosecutor leave to erase an offensive word, which he solicits to withdraw—nor prevent his taking *copies* of such parts of the recorded Proceedings as he desires. Contrary to the Practice of this (Bengal) Army, to refuse access to the Minutes of the Court, for the purpose of making a Reply, at the close of the Defence ([24])—the same would hold good in the Case of a "*Defence*" as well as a "*Reply.*"

The Prosecutor remains in Court except when Court is deliberating ([25])—See *Judge Advocate.*

Publication of Proceedings.

Publication of *Proceedings*—See p. 137.

Punishment.

Punishment *by Comg.* Officer—giving N. C. O. the option of, or of standing a Court-Martial, improper. ([26])

Q.

Quarrel.

Quarrel—An Officer not being content with an Apology offered to be made to him by another Officer, tho' deemed satisfactory by 2 Captains of the Regt.; by the Comg. Officer; by the Genl. Officer Comg. the Division; and by the Comr. in Chief—the Officer making the Apology sent a Challenge to the latter Officer, who in consequence solicited a Gl. Ct.-Ml.—The Comr. in Chief censured highly the refusal of the Apology, and remarked on the inconvenience to the public service in subjecting the Quarrels and Squabbles of Officers to investigation before Courts-Martial—the endless number of which in *India* being a general topic amongst Mily. Men in *England.* ([27])—See *Apology—Challenges.*

([23]) G. O. C. C. 22d Oct. 1834.
([24]) G. O. C. C. 30th April, 1836.
([25]) M. C 8th Feb. 1781.
([26]) Cir. H. G. 24th June, 1830.
([27]) G. O. C. C. 1st Decr. (K. T. 30th Nov. 1835.) The Challenger was reprimanded—under Acts 60 and 69—he is only liable to be Cashiered.

QUESTIONS are decided by a Majority of the Court, if any impropriety in their Decision—the Court, not the J. A., are responsible." ([28])—The *President* has no Casting or double Vote—See p. 148 and 149, Note 6. Questions.

Question if over-ruled should still be recorded for the information of the Comr. in Chief or Approving Officer. ([29])

Questions should not be expunged, unless with the consent of both parties; ([30]) as the Approving Authority cannot judge whether or not justice has been done to both sides of the Case.

R.

RANK—No application for an Alteration of Rank will be received or attended to, after the expiration of 12 months from the date when the Rank was fixed. ([31]) Rank.

RATIONS—Compensation allowed for while in Confinement without trial—See *King's Soldiers.* Rations.

RECOMMENDATION—(to *Mercy*)—Length of *Confinement* has been considered a good cause for. ([32]) Recommendation.

Length of *Service* a bad plea for neglect of duty in a Native Officer, experience should render especially careful ([33]) and not attended to. But where remissness of duty arose from old age, and bodily infirmity, a Sentence has been remitted, and the Officer directed to be brought before the next Invaliding Committee. ([34])

Not attended to where the Crime (Felony) was detrimental to society. ([35])

Where a Soldier was sentenced to Death for Mutiny in having on the Parade pointed a firelock loaded with balled Cartridge at or towards an Officer in the execution of his duty, with intent to kill him, or do him some bodily harm, (and having drawn the trigger of the firelock, which burned priming)—and was recommended

([28]) Lr. J. A. G. 16th March, 1807.
([29]) Lr. A. G. 25th July, 1809.
([30]) Simmons, p. 190.
([31]) G. O. G. G. of India in C. 19th Oct. 1835, No. 223 of 1835.
([32]) G. O. C. C. 2nd Feb. 1828.
([33]) G. O. C. C. 20th May, 1836.
([34]) G. O. C. C. 2nd July, 1836.
([35]) G. O. C. C. 11th Jany. 1836.

to mercy, the Comr. in Chief remitted the Sentence of Death, and ordered the Prisoner's Transportation for Life—H. E. remarking that the Court's lenity would be feared afford a bad Example to the Army. ([36])

Recommendation to be discharged with *Ignominy* under Article 77—See p. 166.

Recommendation sometimes *unanimous*—See p. 167.

Recording Sentence of Death.

RECORDING *Sentence of Death*, under the Criminal Act 9 Geo. 4, c. 74, improper. ([37])—Should, if the Crime does not deserve such Sentence, pass a Sentence of Transportation—*See Art.* 102

Reduction.

REDUCTION to the *Ranks* ([38]) or for a limited period and serve in the Ranks as Privates instead of suspension from R. and P. ([39])

Remarks.

REMARKS have been made on an Officer's Defence, tho' he was dead at the time they were made. ([40])

([36]) G. O. C. C. 5th April, (K. T. 31st March, 1836.) The Soldier had applied to exchange a duty with another Soldier, which was refused, he came to the Evening Parade with his Musket loaded—after Parade he repeated his request, and, on being refused, pulled the trigger. It seems the Soldier was drunk. The Soldier's Plea was that drinking for two consecutive days and nights, had produced insanity; his antecedent character was tolerably good. H. E. observed, that when " Crimes are committed under the influence of drunkenness, &c. he will always consider it as being an addition to their Amt., and he greatly deplored the extent to which he finds this vice prevalent in the British Regts. in India."

A Soldier of the same Regt. and Company was tried for *Murder* for shooting a Private—(*G. O. C. C. 14th May*, 1836,) and, it is said *immediately* after the Parade assembled for reading the G. O. on the Trial of the before mentioned Soldier.

In the Case of a Soldier who coolly and deliberately fired at the Comg. Officer and Adjt. of his Regt. it appeared from his Defence, that he had become stupified, by 4 or 5 days' continued excessive drinking—H. E. desired that " in all Cases where a Soldier may be discovered to have exceeded the bounds of Sobriety, he may be placed in confinement, and kept there till he is perfectly restored to reason: had this precautionary measure been attended to, in the present Case, the life of a fellow creature would, in all probability, have been saved."—*G. O. C. C. 28th (K. T. 25th June,)* 1828.—See *Drunken Soldiers*—ante.

([37]) G. O. C. C. in India, 9th March, 1836, and attention solicited by the Comrs. in Chief at Madras and Bombay to the above Order—See also Cir. O. J. A. G. 6th and 14th April, 1835.

([38]) G. O. P. C. C. 18th Feb. 1834.

([39]) 25th July, 1835.

([40]) G. O. H. G. 26th July, 1823—tried at *Bombay*—See G. O. C. C.—12th Nov. (K. T. 21st Octr.) 1823.

Where a Gl. Ct.-Martial remarked in severe terms on Charges exhibited against a Comg. Officer ([41]) which they declared to be frivolous and vexatious and of which he was honorably acquitted—and the Court animadverted on the circumstance that there had been no previous inquiry—that there had been a delay in publishing the Sentence against the Prosecutor (who became the informant during its Proceedings) and recorded its opinion that the result was injurious to the discipline and reputation of the Army—the Court were ordered to reconsider its Finding on certain Charges—but saw no reason to change its opinion, or to cancel its remarks, and adhered to them. The Genl. Comg. in Chief H. M.'s Army disapproved of the Remarks. ([42])

Remarks made by Genl. or other Officers Comg. Divisions, or Field Forces, to be invariably published in Station, Dett. or Regtl. Ors. as the particular Case may require (to insure regularity in Proceedings.)—G. O. C. C. 27th Jan. 1834.

Reply. REPLY—Where there is no Evidence on the Defence, nor new matter, improper in a J. A. ([43])—See *Reply*, p. 150.

Reports. REPORTS injurious to the Character of an Officer of his Corps, should be intimated to him by his Comg. Officer. ([44])

J. A. to report if no Cts.-Martial inferior to Genl. Cts.-Ml. have been held in his Division. ([45])—See *Weekly Report*—under *J. A.*

Reporters. REPORTERS on the trial of the Mutineers of the Bantry-Bay Squadron, 8th Jany. 1802, the Court permitted Reporters to take Minutes of the Proceedings,

([41]) 28 Charges and 33 Counts by the Adjt. of his Regt.

([42]) G. O. H. G. 29th Feb. 1836—"I have observed with deep regret, that the Court, in the Remarks which it has annexed to its finding of Acquittal, has so far departed from the proper line of its duty as to arraign, in terms not to be mistaken, the Conduct of the highest Mily. Authority in India, in directing the Proceedings in question to be instituted; which Proceeding has a tendency to impair the discipline and good order of the Service:" and of which course of Conduct His Lordship makes known his entire disapprobation—See, G. O. C. C. 28th July, (K. T. 15th) 1836.

([43]) G. O. C. C. 16th Decr. 1829.

([44]) G. O. C. C. 20th Nov. 1834.

([45]) G. O. C. C. 29th Nov. 1821.

with a direction that there should be no publication till after the Trial. ([46])—See *Publication*, p. 139.

Reprimand.

REPRIMAND should be "in such manner as the Commander in Chief, &c. may be pleased to direct." ([47]) Sometimes read by Order of the Comr. in Chief, in the presence and hearing of the Officers of a Station. ([48])

Revision.

REVISION—A Revision has taken place, one of the Members being absent on leave. ([49])—See p. 167, and *President*, ante.

Roman Catholics.

ROMAN CATHOLICS—*(Oath)*—It is stated that a *Cross* of Wood, Metal, or other Substance, put on the Bible, to kiss, is improper—as the Book contains the *Word* of *God* which is everlasting—whereas the *Cross* is perishable. That kissing the Bible is not necessary in taking an Oath. The placing the right hand on any part of the Book is sufficient—or calling God as Witness to the Truth of what a man states may be sufficient if there were no Bible present. ([50])

([46]) Annl. Regn. 1802, p. 355, Chron. There is a distinction between *Mily.* trials and those in the Civil or Criminal Courts. In the former, the Witnesses are either Mily. persons, or those who live within or near the Cantonment—or if under Civil Control—their Characters are well know—In the latter, at home, particularly in political, &c. Cases where the trial may not be held in the same County—the publication of the trial becomes important, as, at times, it has led to the proof of Perjury in some of the Witnesses—If there are persons in the town where the trial is held to disprove any facts stated, *immediate* publication may be of use. If such persons reside at a distance, it is probable there may be no means, if the trial is a short one, of such proof till *after* the trial. Publication is useful for individual, and general justice ;. and is a protection against the effects of Perjury.

([47]) G. O. C. C. 17th Augt. 1825.

([48]) G. O. C. C. 21st April, 1827.

([49]) G. O. C. C. 28th July, 1836.

([50]) That the Cross has only been (improperly) used in India, (per late *Father Anthony*.) That a person is not obliged to keep an unjust Oath—he sinned in taking and would also in keeping it. That a person is obliged to keep a lawful Oath—it would be perjury to break it. Perjury is a most grievous Sin—*(Catholic Catechism by Rt. Rev. Jas. Doyle, D. D., Bp., &c. Lesson XVII)* Anathema VI. "Cursed is he who believes there is Authority in the Pope, or any other person, that can give leave to commit Sin ; or that for a sum of Money can forgive him his Sins" (without a hearty repentance, and serious purpose of amendment)—" The Papist believes, that whosoever at the hour of death denies any crime, of which he is guilty, and swears himself to be innocent, when he is not so ; can have no Hope of Mercy." *(Catholic Catechism*, p. 140.*)*

S.

SENTENCE—*(Death)*—(Mutiny and Murder)—by an *European* Soldier, ordered by the Comr. in Chief, after execution, to be hanged in *Chains* (1)—and in the Case of a *Native Soldier* for *Murder* recommended by the Court, and ordered (2)—also, ordered in the Case of a *Camp-Follower*. (3) **Sentence.**

Death commuted (4)—Native Camp-Follower—Robbery—to 10 and 7 years Hard Labor in Irons on the Roads. (5)

Death commuted to *Transportation* for 7 years, subject to the *Concurrence* of the Rt. Hon. the Governor General in Council (a King's Soldier for a Civil Crime.) (6)

For *Civil* Crimes it should be Imprisonment, and not Solitary Imprisonment. (7)

Where a Soldier was tried for *Murder* and *Rape*, at the same time, the Court passed two Sentences ; (8) —but such a trial is not expedient.

In the Case of *Mutineers*, the Court simply sentenced the *(Native)* Soldiers to " Suffer Death at such time and place and in such manner as H. E. the Comr. in Chief may be pleased to direct"—ordered by the Comr. in Chief " to be hanged by the Neck until they are dead." (9)

To be dismissed with *Ignominy*, not unless for *disgraceful* Crimes. (10)

(1) G. O. C. C. 22d Jany. 1818. (2) G. O. C. C. 14th June, 1832.
(3) G. O. C. C. 23d Feb. 1832. (4) See p. 11.
(5) G. O. C. C. 10th Decr. 1822, and 5th Nov. 1831—and see Note 26, p. 12.
(6) G. O. C. C. 25th (K. T. 24th) Feb. 1835, " the word subject to the concurrence, &c." are not usual.
(7) G. O. C. C. 24th May, (K. T. 15th) 1828.
(8) Found Guilty of *Manslaughter*, and acquitted of *Murder*—Sentence 1 year's Imprisonment; for the *Rape*—to be *hanged*—commuted to Transportation for Life—G. O. C. C. 18th Augt. 1827.—The Sentence for Manslaughter was merged in that for the Rape—The Rape was connected with the former trial as to date—but the Rape was committed on a different person.
(9) G. O. C. C. 3d Nov. 1824—and many other Cases *(Barrackpore Mutiny)*. The M. A. and Articles of War simply direct—" shall suffer Death, or such other punishment." But it is usual to *shoot* Deserters, and for the Court to express the same.
(10) G. O. C. C. 9th May, 1831 (a Native Soldier).

Sentence. Sentence of *Transportation* not to name the Place. ([11])

Sentences of *Imprisonment*, as to King's Troops, takes effect from the *date* of passing the Sentence. ([12])

Inconvenient and contrary to usage to name the *Place*. ([13])

Time in confinement, sometimes deducted by the Comr. in Chief. ([14])

Sometimes when the Regt. of the *Prisoners* is ordered to march, they are ordered to march as *such*, and to undergo the unexpired portion of their Imprisonment on the arrival of the Corps at the new destination. ([15])

Sentence sometimes *partly* confirmed. ([16])

Sentence—(*mitigated*)—Apothecary "from reduced to the Rank of Asst. Apothecary, and placed at the bottom of the List"—to be 10th on the List. ([17])

Sentence of Suspension of an Officer from Rank and Pay remitted, as being in debt, it would still more embarrass him. ([18])

Sentence to be communicated to Prisoners as soon as approved. ([19])

Sentences on N. C. O., Staff Sergts., &c.—Court may sentence to be dismissed from Appmt. or to be reduced, &c.—but not to be sent back to their Corps, &c. may recommend. ([20])

Deserters—(Native Soldiers)—Sentence of Death has been commuted to Imprisonment with Hard Labor for 14 years. ([21])

A Sentence of *Solitary* Imprisonment has been mitigated to Imprisonment. ([22])

In a case of Mutiny—Sentence of *Death* remitted on condition of Solitary Imprisonment for 2 years. ([23])

([11]) Cir. J. A. G. No. 14, 12th Jany. 1836.

([12]) War Office, 5th July, 1833—and K. T. in India, 16th Nov. 1834.

([13]) G. O. C. C. 25th (21st K. T.) July, 1834 and 26th Oct. 1835.

([14]) G. O. C. C. 29th Oct. 1835. ([15]) G. O. C. C. 7th Nov. 1835.

([16]) Camp-followers Sentenced to be flogged, and to Hard Labor in Irons for 8 years—former part not confirmed.—(*G. O. C. C. 12th Augt.* 1824.)

([17]) G. O. C. C. 25th Augt. 1826. ([18]) G. O. C. C. 8th July, 1826.

([19]) G. O. C. C. 23d Sept. 1836. "Soldiers have under the Articles of War, in certain Cases the Right of Appeal."

([20]) G. O. C. C. 23d Sept. 1826. ([21]) G. O. C. C. 20th June, 1826.

([22]) G. O. C. C. 5th July, 1833. ([23]) G. O. C. C. 4th May, 1830.

A—N. C. O.—*Reduced* and Sentenced to Transportation. ([24]) Sentence.

In the *Navy* there is no Secresy as to the Sentence—but only as to the Vote or Opinion of any Member. ([25])

Native Christians—Lr. J. A. G. 16th April, 1836, states that the G. O. G. G. of I. in C. 24th Feb. 1835, "does not extend to Christian Drummers or Musicians, who are governed by the Rules laid down in the Articles of War for the European Troops. It only affects Native Soldiers not professing the Christian Religion."

SENTRY—Property not made over to, fault of N. C. O. ([26]) Sentry.

Must be supported in their duty—an Officer dismissed for striking a Native Sentry. ([27])

The number at night over Treasure should be increased. ([28])

SERVICES of Soldiers—(Regtl. Board)—When not a sufficient number of Captains present, at the Head-Quarters of a Regt. to form a Board, the Officers next in Seniority may be selected. ([29]) Services.

SHIP BOARD—(*Transport Ships*)—No Smoking between Decks—no Lights, except in Lanterns. ([30]) Ship Board.

SIGNATURE—The Signature of Officers to Official Papers, expected to be in confirmation of their *correctness*; and it is their bounden duty to afford such a portion of attention to what they sign as may prevent errors, and give due weight to their attestation. ([31]) Signature.

SOLDIERS—(Native)—Invalided from a Regt. amenable to trial for Offences committed previous thereto, by a Court superior to that of their Regt., to which they no longer belong. ([32])—See *Jurisdiction*. Soldiers.

Refusing to obey Orders—Soldiers refusing to obey an Order distinctly given, or resisting the authority

([24]) G. O. C. C. K. T. No. 29, 23rd March, 1835.
([25]) McArthur, Vol. I. p. 297. ([26]) G. O. C. C. 10th Decr. 1822.
([27]) G. O. C. C. 22d (K. T. 17th) Sept. 1827, censuring there being two by Day and *one* by Night!
([28]) G. O. C. C. 2d July, 1836.
([29]) Cir. Lr. H. G. 16th May, 1832.
([30]) G. O. (No. 513) H. G. 14th March, 1834—See also Genl. Regns. and Ors. p. 321.
([31]) G. O. C. C. 11th July, 1836.
([32]) Lr. No. 1333—Adjt. Genl. 17th July, 1834.

of a N. C. O., to be confined without *altercation*, and be immediately reported to the Captain of the Troop or Company, or to the Adjt. [33]

Stoppages.

STOPPAGES—Soldiers have been put under Stoppages for breaking a Lamp in the Barracks. [34]

Of one Penny a Day of Pay for 2 years, commencing from the expiration of the period for which he is at present under Stoppages. [35]

Soldiers are placed under Stoppages for losses by neglect of duty while Sentry; said to be proper under G. O. G. G. in C. 7th May, 1819. [36]

Should not be inserted in a Sentence for obtaining Money under false pretences. [37]

In a Case of *Theft* Stoppages have been directed to be made [38]—but, not at present sanctioned in the Company's Articles of War.

Stoppages of the allowance in lieu of *Beer* or *Liquor*, to commence on the expiration of the Imprisonment [39]—Article 51.

All Allowances, excepting Pay-proper, "are liable to be put under Stoppages, for the Recovery of lawful Retrenchments—unless specially ordered to the contrary by Govt." [40]

Sunday.

SUNDAY—A Court of Criminal Jurisdiction has sat over Saturday, and continued the Proceedings during part of Sunday morning. [41]

Suspension.

SUSPENSION *from Pay*—"When a Court-Martial intends that a Culprit shall be mulcted of his pecuniary resources as a punishment for Crime, they will be particular in stating whether their Sentence goes to *all* Pay and Allowances, or that it is to operate on *part* only." [42]

From Rank, Pay and Allowances (*Company's* Officers) under Sect. XIV. Art. VIII.—If a Court intend to suspend an Officer from his *allowances*, as

(33) Cir. H. G. 24th June, 1830, para. 7.
(34) G. O. C. C. 22d August, 1834. (35) G. O. C. C. 31st Decr. 1834.
(36) The article should provide for the Case.
(37) Lr. No. 48—J. A. G. 3d Feb. 1835.
(38) G. O. C. C. 3d May, 1828. (39) G. O. C. C. 16th May, 1836.
(40) Pay Regns.
(41) Trial of *Cochrane and De Berenger*, and see Ste. Tri. vol. 1, p. 763, (1553, A. D.)
(42) G. O. C. C. 27th Oct. 1835.

well as pay, must express in the Sentence, "rank, pay, and *allowances*; otherwise, he does not lose *them*." [43]—See *Pay*.

T.

Transportation.

TRANSPORTATION—Soldiers at New South Wales kept to Hard Labor in Chains. [44]

Soldiers often commit Crimes in the hope of being transported *(Sydney'd)*—and where a Soldier expressed such a hope, the Court sentenced him to Solitary Imprisonment; which, it was remarked, was a judicious punishment in such a Case. [45]

There should be no specification of Place, [46] but "Transportation, as a Felon, for —— years. [47]

Treasure.

TREASURE—The Comr. in Chief highly censured Conduct, where there were two Sentries by *day*, and only *one* at *night*—and where the person who had access to the Tumbrils containing the Coin, was a brother to the Treasurer, and not a Servant of Government—and remarked "when examples of such carelessness are set by those in Authority, it is little surprising that such results (2,000 Rs. were stolen) present themselves; and where sums of public Money are lost under such circumstances, Officers in Command must not wonder if they are held strictly responsible for the deficiency—and calls upon all Comg. Officers to take care, that the *Orders* given to Guards furnished by their respective Corps, are always sufficient to meet the object in view, and are clearly explained to those who have to carry them into execution. [48]

[43] Lr. Secy. Govt. Mily. Dept., No. 95, 7th Nov. 1833.

[44] G. O. C. C. 6th (K. T. 3d) June, 1834, and referring to G. O. C. C. 24th May, 1830.

[45] G. O. 23d (K. T. 20th) June, 1834.

[46] Cir. J. A. G. No. 11, 12th Jan. 1836. [47] For Life, 14 or 7 yrs.

[48] G. O. C. C. 2d July, 1836—and see G. O. C. C. 18th June, 1836, in which H. E. referred to ignorance of Section 20th, Standing Orders of the Army, *(Conduct of Guards and Sentries)* and owing to the Escape of a Prisoner from a Guard published—*(See G. O. C. C. 20th May*, 1836) the following order in addn. to that Section, para. 7, "and no Sentry is ever to be left upon his post, without being relieved, for a longer period of time than *two* hours, provided the guard from which the Sentry is posted affords the means of relief;" but, "in cases of any peculiar severity of weather, Sentries may be relieved *more* frequently, at the discretion of the Comr. of the Guard." *Add as an addl. para., to be numbered* 21 *of Section* 20.

Trial.

TRIAL over and Sentence, &c. approved—Prisoner should not be detained in Confinement. ([49])

By *inferior* (Regtl) Ct.-Martial, under Act 85—meant in the Case of Recruits, and (before) good Soldiers—to give them the benefit of the most lenient course of Proceedings ([50])—and on a Charge which, according to the Classification of Crimes and Punishments, would, under ordinary circumstances, be tried by a Superior Court. ([1])

New Trial—Where an Arty. Soldier at Dum-Dum was tried by a *Regtl.* Ct.-Ml. for a Crime strictly cognizable by a *Genl.* Ct.-Ml. the Case was submitted to the Genl. Officer Comg. the Division for approval; ([2]) who, it is said, referred it to the Comr. in Chief, who considered the Procgs. illegal; and ordered the Prisoner to be tried for a less Crime by the Regtl. Court. ([3])

Where a Man was tried for breaking his Arrest before the decision of his former trial ([4]) was known—the J. A. who conducted the former and present trial, was sworn, and declared the former Proceedings to have been conducted by him; and were forwarded by him to H. E. the Comr. in Chief, and were the Proceedings on the said trial. ([5])

Trial *de novo*—" Evidence of former trial read (with *consent* of both parties) over to the Witnesses (*re-sworn*) and confirmed by them." ([6])

" As it sometimes happens, that it may be necessary for Sentries to have their firelocks loaded, to deter Prisoners from attempting to escape, or for other reasons, the Comr. of a Guard may order one, or more Sentries to load; and in such case, the *loaded firelocks* may be transferred from the Sentry going off duty to him who comes on."

" But this is only to be done on important occasions; and when done, the Comr of the Guard is always to see the Cartridges withdrawn from the firelocks before the Guard is dismissed. In case of a waste of ammn. by uselessly loading, on trivial occasions, the Comr. of the Guard will be held pecuniarily responsible for the value of the Cartridges"—See also *Field Exercise and Evolutions of the Army*, 1833, p. 299 to 305—there are sometimes *double* Sentries.

([49]) G. O. C. C. 23d Sept. 1826.

([50]) Cir. No. 649—War Office, 23d Nov. 1829.

([1]) Cir. No. 658—War Office, 24th March, 1830.

([2]) Under G. O. C. C. 1st Feb. 1821—the Sentence exceeding 300 Lashes.

([3]) As the former trial was illegal (9 or 10 years ago.)

([4]) See G. O. C. C. 1st Decr. 1828.

([5]) G. O. C. C. 29th Decr. 1828.

([6]) Tytler, p. 133—So in *Lord G. Sackville's* Case—See *Depositions*.

V.

VERDICT—See *Finding*, p. 163. Verdict.

VOTES—There must be a *Majority* as to *one Specific* Punishment—suppose Votes.

7 Officers voted for Discharge. 5 Ditto ditto Suspension. 1 Ditto ditto Degradation. 1 Ditto ditto Reprimand. 2 Ditto ditto Acquittal. 16	The *Majority* of the *unanimous* votes 7, does not decide the Sentence of the Court—for 9 is the Majority of 16.

The J. A. must propose to each Member of the Court to re-vote, till 9 votes are obtained on any of the above, or any other Punishment (7)—in Cases where a bare Majority is legal—where 2-3rds are required the same principle would prevail in obtaining 2-3rds.

VOTING Members acquitting, must still, if the Prisoner be convicted, vote as to a Sentence. (8) Voting.

W.

WARRANT—*(Copy)* of the Genl. Officer's, Comg. the Division, signed by A. A. G. sent to an Officer officiating as J. A. at a distant Station. (9) Warrant.

WIFE—See *Evidence*. Wife.

WITNESSES, tampering with—a Native Officer who had been appointed President of a Native Gl. Ct.-Ml. *discharged* the Service. (10) Witnesses.

Native Witnesses—remarked on by Ct.-Ml. as unfit and unworthy to remain in the Service—discharged by the Comr. in Chief. (11)

List of, to Prisoner in all practicable Cases. (12)

In a Case of *Murder* the Court-Ml. have remarked on the unsatisfactory Evidence of *Medical* Witnesses. (13)

If a Witness is in arrest should not be released therefrom while giving his Evidence—and replaced

(7) Lr. No. 2021—D. J. A. G. in charge of J. A. G. O. 16th Decr. 1833.
(8) Lr. No. 256—J. A. G. 8th Sept. 1832.
(9) G. O. C. C. 25th Sept. 1832. (10) G. O. C. C. 18th Oct. 1823.
(11) A Havildar and Sepoy Provl. Battn. G. O. C. C. 9th Sept. 1825.
(12) G. O. C. C. 23d Sept. 1826. (13) G. O. C. C. 27th Sept. 1828.

Witnesses. in arrest—an unnecessary, and unwarrantable exercise of authority in the Court. ([14])

When a man who was an *Accessary* after the fact, was examined as a Witness on the trial of the *Principal* and afterwards tried; should not have been examined without intimation that his own trial was to follow —or warning him of the possible injurious tendency of his Evidence to himself—(Disapproval of Sentence, &c.) ([15])

Witnesses should be protected by Court from abusive language. ([16])

A Witness's veracity may be impeached, but not his General Conduct as an *Officer*. ([17])

If it is necessary to require a Witness to travel by *Dawk*—(in emergent Cases,) the J. A. must make the necessity apparent to the Officer Comg. the Division in which the Officer is serving, under whose authority the Orders should be issued. ([18])

Where an Officer summoned on his Defence the Qr. Mr. Genl. of the Army, it was said, the Govt. or Comr. in Chief would decline to Order him to proceed (to a distant Station)—and Deft. would be obliged to pay the expense. ([19])—See *Witnesses*, p. 125.

Witnesses—Evidence *De bene esse* of those leaving a Station, &c. p. 125.

Non-Mily. Witness enter into recognizances before the Magistrate, to appear at a Ct.-Martial. ([20])

Expenses allowed to Witnesses—"The Practice of all Cts. of Justice, that the Persons at whose requisition they are summoned, should defray the expense of their Witnesses"—"*resolved* that it be a standing Rule, that the Charge be paid by the party so sum-

([14]) G. O. C. C. 16th Decr. 1829.
([15]) G. O. C. C. 30th March, 1832.
([16]) G. O. C. C. 25th Oct. 1834.
([17]) G. O. C. C. 20th Nov. 1834—If a Witness has committed a Felony, the Conviction and Judgment must be proved—if he has undergone the Sentence he is a *legal* Witness—except the Conviction, &c. were for *Perjury*—*Jervis*, Coroner, p. 233.
([18]) Lr. A. G. No. 318—19th March, 1829—this Order confirmed by the Comr. in Chief would pass the expense on its being submitted to Govt. (Lr. Secy. Govt. Mily. Dept. No. 407—26th Feb. 1830.—See G. O. C. C. 31st Decr. 1829.
([19]) Lr. No. 605—J. A. G. 29th Dec. 1834.
([20]) Lr. J. A. G. No. 1917—22d April, 1829.

moning—the Govt. reserving to themselves the Power of indemnifying (which they mean to do) except where it shall plainly appear that the Evidence has been wantonly and unnecessarily called upon." ([21]) Witnesses.

Where a Witness, as appeared in Evidence, circulated *Reports*, relating to the Prosecutor's wife, which he in Court denied on *Oath*, the Court placed him in Arrest, until the decision of the Genl. Comg. in Chief should be known. ([22])

Witnesses not on the List may be examined.X

Witnesses *(Amnesty)*—J. A. "I am directed by the Court, to inform you that, in consequence of the *Amnesty*, it is impossible you can in any point of view criminate yourself, by declaring any thing you know relative to the Transactions *(Mutiny)* at Seringapatam; and they, therefore, *caution* you, not to injure yourself by withholding any information." ([23])

In a Case of *Murder* Depositions of the principal Witnesses were taken in a *private* room in the Council Hall before 3 Magistrates, and next day a *public* examination took place at the Town-Hall, when the Depositions were read over to the Prisoner, and he was committed for trial. ([24])

The objection to the Evidence of a *Deserter* is not valid. ([25])

WOMEN—Comg. Officers may direct their Allowance to be stopped for misconduct. ([26]) Women.

WOUNDING—*under Section* 60, 9 *Geo.* 4, *c.* 74, to insert in Charges the words "*with the intent to do some grievous bodily harm.*" ([27]) Wounding.

([21]) M. C. 19th Oct. 1775, in O. J. A. G. Lr. No. 792—5th Jany. 1824. "A Witness who had come from the *Rules* of the K. B. asked for his expenses *before* he gave his Evidence—the Judge told him that this was not a Case (action against Bankers) in which he was entitled to d mand his expenses—Witness said he would consent to be committed, refused to be sworn—committed to close custody in Newgate." *Disney* v. *Wright and others* before C. J. and a Special Jury, 13th Feb. 1833.

([22]) Asst. Surgeon Munro—on the trial of Capt. Clarke, 77th Foot, at Glasgow—U. S. J., No. 87—Feb. 1836, p. 270.

([23]) Lt.-Col. Bell's Trial, (Madras) Nov. 1809.

([24]) Near Truro—(Plymouth Journal) March, 1830.

([25]) G. O. K. T. No. 14—15th Oct. 1831. ([26]) Pay Regns.

([27]) Lr. No. 284, O. J. A. G. 6th June, 1835.

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For the Govt. of Officers and Soldiers in the Service of the East India Company.

* See Index at the end of this Table.

I N D E X. *

* See also *Precedents* A. B. C. preceding this Index.
(10) 5,—in Index means—note (10) of page 5—and so throughout the Index.



ERRATA.

P. 1, text, line 11, after "*as*," add "*rendering* liable."

Note (2). l. 8, add "tried in Septr. 1829."

P. 3, l. 19, dele "*as*."

P. 4, note (7) l. 17, should be "*are* four-fold."

P. 26, last line, do. "*have* been."

P. 27, line 16 bottom, "*Time*" not "Times."

P. 33, Note (77) top line, after "Property" add "or damages for property."

P. 36, Note (93) l. 6, "*propose*" not "proposed,"

P. 37, l. 7, in certain "*Cases*."

P. 41, l. 15, "*There* is a very, &c."

P. 44, l. 28, "*Orders* such, &c."

P. 61, l. 3, "Punishments."

P. 64, Margin, after clause 10, Annl. M. A. add "Art. 80."

P. 77, Note (2) l. 5, "*on* the score," &c.

P. 94, l. 3, "*Should* be used, &c."

P. 99, l. 21, "not *repealed*."

P. 102 Note (30) l. 2, a "D. O." not "G. O."

P. 103, Table add "see p. 216."

P. 109, l. 14, "*Art. II.*" not "Act II."

P. 113, Note (1) 139 in year, 1834.

P. 123, Heading line should be "Former Convictions."

P. 124, *do.* "Copy of Charges to Prisoner."

P. 125, *do.* "Witnesses."

P. 126, *do.* "Prosecutor."

P. 127, *do.* "Prosecutor."

P. 128, *do.* "Prosecutor."

P. 132, l. 14, "*Court*," not Courts."

P. 140, top line should be "arising from *their*."

P. 144, Note (29) l. 3, "*advanced*" not advancing."

P. 151, Note (14) l. 10, presumed, and l. 11 "he attempts"—not "the attempt;" and l. 12 dele "*and*"

P. 174, Oath for Members, after "*will*" add "*return a true Verdict and that I will not*."

P. 179, Note (16) l. 4, "*a* person" —not "*as* person."

P. 191 Note (16) Houses.

P. 200, *Sunday*, 47, l. 2, "might *not* be," and l. 3 "*and* a Court of Requests" not "*but* a &c."

P. 200, l. 7, ( ) put (31)

P. 200, l. 6, bottom, text "with*out* any" not "with any"

P. 212, l. 7 and 14 "Mortgag*or*" not "*ger*"

P. 220, l. 26, dele "*as*" before "a remedy"

P. 221, l. 7, "*or* line" not "*on*."

P. 227, l. 16, objected *to*."

P. 228, l. 11, bottom (or other Officer) having.

P. 231, l. 22, "should *not* transmit."

P. 259, Note (18) l. 7. "It was *imagined*" not, "imagin*able*." l. 19, "Court of *Law*" not "*Laws*," l. 20, after "*claims*" add "to the Mahrattah Prize of 1817-18."

L. 31 "*of*" not "*if* unclaimed."

P. 260, Note (27) l. 2, "*Arts*." not "*Acts*."

P. 265, Note (6) should be the *words*, "Subject to, &c."

P. 267, put (26) before "*censuring*."

FINIS.

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